

POLICY ISSUE
Information

May 23, 2016

SECY-16-0064

FOR: The Commissioners

FROM: Victor M. McCree
Executive Director for Operations

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

PURPOSE:

This paper responds to Staff Requirements Memorandum (SRM)-SECY-15-0129, “Staff Requirements-SECY-15-0129-Commission Involvement in Early Stages of Rulemaking,” February 3, 2016 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16034A441). This paper does not address any new commitments or resource implications.

BACKGROUND:

In the October 19, 2015, SECY response to SRM-COMSGB-15-0003, “Commission Involvement in Early Stages of Rulemaking,” August 14, 2015 (ADAMS Accession No. ML15226A355), the Committee to Review Generic Requirements (CRGR) stated that it had identified, since October 2007, when the Commission approved removing the requirement that CRGR review rulemaking packages, that the U.S. Nuclear Regulatory Commission (NRC) staff has not requested CRGR review of any proposed rule packages. The CRGR concluded that the lack of requests for CRGR review of rulemaking packages may be due in part to a lack of guidance or criteria to assist the Executive Director for Operations (EDO) and Office Directors in deciding when to request CRGR review of a particular proposed rulemaking.

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To address this gap in its operating procedures and the NRC staff's implementing procedures, the CRGR developed criteria and implementing guidance to clarify at what stage and under what conditions the NRC staff is expected to request a CRGR review of proposed rulemaking packages.

In SRM-SECY-15-0129, the Commission directed that the CRGR provide the criteria to the Commission for information. Moreover, in the same SRM, the Commission directed the staff to 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. The following discussion also provides the CRGR plan to address this direction.

In a related matter, the CRGR, the program offices involved in backfitting, the Office of Administration (ADM), and the Office of the Chief Human Capital Officer are working with the Office of the General Counsel (OGC) to conduct a broader evaluation of the adequacy of our guidance, training and expertise for assessing issues with backfit implications, and for responding to associated questions raised by our stakeholders.

DISCUSSION:

In coordination with the Offices of Nuclear Regulatory Research, Nuclear Reactor Regulation (NRR), Nuclear Material Safety and Safeguards, New Reactors, Nuclear Security and Incident Response, OGC, and ADM, the CRGR developed the following criteria to address the gap in its operating procedures and the staff's implementing procedures. The criteria, and associated implementing procedures, which are enclosed, will provide clarity regarding when the NRC staff should request CRGR review of proposed rules. The criteria includes circumstances in which 10 CFR 50.109(a)(4) applies and does not require a backfit analysis such as for compliance, adequate protection, and enhanced protection related backfits. Specifically, the staff will request a CRGR review of a rulemaking package when any one of the conditions of the below criteria is met:

1. The staff indicated, in the rulemaking plan, that the rulemaking would not constitute backfitting. However, in developing the proposed rule, the staff identifies that a backfit is possible.
2. The regulatory analysis identifies significant costs incurred as a result of the proposed rulemaking, and qualitative factors were used to justify the rulemaking.
3. There is substantial uncertainty (in the statistical sense) in the quantitative benefit determinations in the backfit analysis.
4. The backfitting is justified or issue finality provisions in Part 52 are avoided based on reliance on the compliance exception.
5. As directed by the EDO or when substantive concerns have been raised by stakeholders or NRC staff regarding the backfit or regulatory analysis.

CONCLUSION:

The above criteria and associated implementing guidance will be used by the CRGR, the Office Directors and the EDO, as appropriate, to decide whether or not to request CRGR review of a rulemaking package. The criteria and guidance has been provided to the CRGR and the offices for immediate use. After a 1 year pilot period, each office involved in rulemaking will provide the CRGR with its assessment and lessons-learned from applying the new criteria and guidance.

The CRGR will assess the lessons-learned and feedback from the staff on its use of the new guidance and criteria and inform the Commission regarding its determination if further process enhancements would be beneficial in its August 31, 2017, CRGR annual periodic assessment to the Commission. Any changes to the scope of CRGR review and the associated staff responsibilities will be incorporated into the subsequent revision of the CRGR charter and the appropriate agency and office implementing procedures.

COORDINATION:

OGC has reviewed this paper and has no legal objection.

/RA Michael R. Johnson Acting for/

Victor M. McCree
Executive Director
for Operations

Enclosure:
Guidance for Deciding When
to Request CRGR Review
of a Rulemaking Package

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