

July 2, 1979

SECY-79-424

For:

~~The Commissioners~~

From:

COMMISSIONER ACTION

Norman M. Harper, Director

~~Office of Management and Program Analysis~~

Thru:

Lee V. Gossick
Executive Director for Operations



Subject:

VALUE-IMPACT GUIDELINES

Purpose:

To obtain Commission approval of a Federal Register Notice inviting public comment on NRC's Value-Impact Guidelines.

Issues:

Has the requirement to prepare value-impact analyses discouraged the development of new regulations?

What issues were raised by staff comments on the guidelines?

To what degree should NRC consider costs as a criterion when making regulatory decisions?

Should office-specific guidelines be available for public comment?

Background:

When the Commission approved the agency-wide guidelines in January 1978, Commissioner Bradford asked that after one year we determine whether the guidelines had in any way discouraged the development of new regulations. (See Enclosure A). Office Directors were asked to provide each member of their staffs the opportunity to comment on this matter.

In an October 26, 1978 letter to the Administrative Conference on the use of benefit-cost analysis by regulatory agencies, the Commission made a commitment to publish the agency-wide Value-Impact Guidelines for public review. Subsequently, the Commission directed the staff to review the agency-wide guidelines as a prelude to publishing them and to determine whether any office level guidelines should be published. (See Enclosure A).

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Discussion:

1. Has the requirement to prepare value-impact analyses discouraged the development of new regulations?

We have assumed that the phrase "discouraging the development of new regulations" describes a situation in which the value-impact analysis process is considered so onerous that an office elects not to develop a new regulation. The staff responses* did not cite any examples of regulations that were not prepared as a result of the value-impact requirement. However, one office noted that the value-impact requirement can lead to an extension in the time it takes to prepare and implement a regulation.

2. What issues were raised by NRC's staff comments on the guidelines?

There were extensive comments on the agency-wide guidelines. With one major exception identified as Issue #3 below, MPA believes that the comments can be accommodated or successfully responded to without drastically revising the guidelines.

The comments, in summary, suggest that: (1) more specificity on value-impact content and depth of analysis be required, (2) value-impact analysis shouldn't be required for Regulatory Guides or Branch Technical Positions because they aren't legally enforceable, and (3) value-impact is the same as cost-benefit or cost-effectiveness analysis, and hence is superfluous new terminology.

3. To what degree should NRC consider costs as a criterion when making regulatory decisions?

The comments from the Office of the Executive Legal Director raised a major issue. Their memorandum of May 1, 1979 is quoted below in its entirety:

"OELD has only one comment on the existing guidelines for conducting value-impact analysis. The guidelines provide that cost considerations may not take precedence over considerations of health, safety, environment, or national security, and imply that cost considerations are relevant only in choosing among alternative means in realizing

* Staff responses are part of Enclosure E, the package of materials that will be placed in the "H" Street Public Document Room (PDR) and all local PDR's.

equivalent benefits in regulatory matters. The Commission itself needs to address whether cost considerations may play a role in health, safety, and national security issues. The present guidelines provide for only limited consideration of cost in this context, and there has been considerable debate as to whether the Commission could or should broaden the role of cost considerations in this regard. The guidelines could be made more explicit on this point and/or public comment could be focused on this matter. Also, the limited role provided for cost considerations in making environmental decisions is not entirely consistent with the Commission's interpretation of NEPA. NEPA clearly contemplates that cost could be the deciding factor in some instances."

We propose to address the above issue in the Federal Register Notice that invites public comments on the Value-Impact Guidelines.

4. Should office-specific guidelines be available for public comment?

Staff views on publishing office-specific guidelines are mixed. SD and ADM favor publication, while other offices (excepting NMSS) offered no opinions. NMSS has "serious reservations" because they believe that the implementation guidelines may differ enough from office to office that the public would be confused. We believe the benefits of public exposure outweigh the reservations expressed.

The proposed Federal Register Notice (Enclosure B) includes a summary of the guidelines and notes that the agency-wide guidelines, recent office comments, previous Commission comments, and office-specific guidelines will be available in the "H" Street Public Document Room, as well as all local PDR's, and will be mailed upon request.

After receiving public comments, we propose to analyze the comments, revise the agency-wide guidelines as necessary, and ask for Commission approval of the revised guidelines. It is estimated that 1 to 2 staff months of effort will be required to complete these tasks.

Recommendation:

That the Commission: (a) approve the Federal Register Notice contained in Enclosure B; (b) note our Congressional Oversight Committee will be informed by letters such as Enclosure C; and (c) note that a public announcement such as Enclosure D will be issued upon filing of the notice with the Federal Register.

Coordination: The Offices' comments on the guidelines are attached. The Office of Congressional Affairs concurs in the letters to the Congressional subcommittees and the Office of Public Affairs concurs in the draft public announcement.

JH Barrett
for Norman M. Haller, Director
Office of Management and Program Analysis

Enclosures: *in B.P.*

- A. (Item 1) - Memo from S. Chilk to L. V. Gossick, dtd. 1/23/78.
- (Item 2) - Letter from Chmn. Hendrie to Robert Anthony, Chmn., Administrative Conference of the U. S., dtd. 10/26/78.
- (Item 3) - Memo from S. Chilk to L. V. Gossick, dtd. 1/18/79.
- B. Draft Federal Register Notice
- C. Draft letter to Congress
- D. Draft Public Announcement
- E. Value-Impact related materials to be placed in PDRs.

(Commissioners, Commission Staff Offices Only)

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Tuesday, July 17, 1979.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT July 11, 1979, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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ENCLOSURE A
(ITEM 1) - MEMO FM CHILK TO GOSSICK DTD 1/23/78

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