



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

January 23, 1978

OFFICE OF THE
SECRETARY

MEMORANDUM FOR: Lee V. Gossick, Executive
Director for Operations

FROM: *Fw* Samuel J. Chilk, Secretary *EWM*

SUBJECT: SECY-77-388A - VALUE-IMPACT GUIDELINES
(COMMISSIONER ACTION ITEM)

This is to advise you that the Commissioners (Commissioner Gilinsky noting without objection) have agreed to adopt the guidelines contained in the subject staff paper for use in value-impact analysis (VIA).

In connection with his concurrence, Commissioner Bradford has provided the following comments:

- "1. I would like to know in a year whether staff members feel that this exercise serves in any way to discourage regulatory initiative;
2. I assume that Enclosure D will be revised to reflect the EDO staff reorganization eliminating the Office of Planning and Analysis."

The Office of the Executive Director for Operations was informed of this action by telephone on January 20, 1978.

cc:
Chairman Hendrie
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Bradford
General Counsel
Director, Policy Evaluation
Acting Director, Planning & Analysis

Enclosure A (Item 1)

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ENCLOSURE A
(ITEM 2) - LTR FM HENDRIE TO ANTHONY, CHMN, ADMIN CONF



NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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October 26, 1978

OFFICE OF THE
CHAIRMAN

Honorable Robert A. Anthony
Chairman
Administrative Conference of the
United States
2120 - L Street, N.W., Suite 500
Washington, D.C. 20037

Bob
Dear Chairman Anthony:

Thank you for your letter requesting our comments on draft recommendations regarding the use of cost-benefit and other similar analytical methods in regulation. Your letter notes that the primary purpose of the proposed recommendation is to enhance the effectiveness of agency decision-making in those instances where Congress or agencies decide that such techniques are to be used; the recommendation is not intended to promote or discourage the use of cost-benefit analysis per se.

The NRC recognizes the importance of making the nuclear regulatory process as efficient and effective as possible. Some time ago, the Commission instituted a policy of carefully assessing the impacts as well as the value of proposed major regulatory actions.

Regarding the recommendations, I will confine my remarks to those directed to regulatory agencies. First, you recommend that each agency, by means of notice-and-comment procedures, develop general statements of policy or regulations describing the procedures which it would observe in the use of such techniques. In January 1978, the Commission adopted for NRC use a set of "Value-Impact Guidelines." These Guidelines were primarily designed to assist the NRC staff in performing impact-value analyses and, because they were considered internal management tools, were not made available for public comment as the Conference recommends. I believe, however, there would be advantages to publishing a policy statement for comment. Such a statement could lay out for public review NRC's perspective on its cost-benefit approach (e.g., method for evaluating regulatory impacts, including so-called intangibles, discounting future costs or benefits, handling distributional effects, etc.) as well as the legal basis for an agency's conduct of the analysis and the manner and extent of public participation in the process. Therefore, the Commission is asking the staff to review the Value-Impact Guidelines to prepare them for publication for public comment.

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Enclosure A (Item 2)

The second and third recommendations assume the agency has a general policy statement or regulations on the use of cost-benefit analysis. However, I infer the intent of these recommendations is to assure that the public is fully informed regarding the uses to which cost-benefit analyses have been or will be put in the context of a regulatory proceeding. Should the Administrative Conference adopt these recommendations, the NRC would review carefully its present practices to assess whether additional actions would be needed to improve our current procedures.

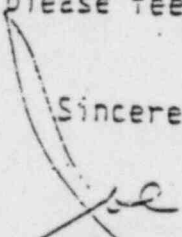
NRC's licensing and rule-making proceedings frequently do integrate cost-benefit or similar analyses in the decision-making process. President Carter's Executive Order 12044 called for preparation of a publicly available analysis of economic consequences of proposed regulatory actions. In commenting on the Executive Order, the Commission noted that the NRC staff performs a value-impact analysis for most proposed regulations according to Commission approved guidelines and it is now NRC policy to make these value-impact analyses fully available for public review at the time proposed or final regulations are published. In addition the NEPA cost-benefit analysis in reactor licensing proceedings is carefully reviewed by NRC hearing boards, usually in public sessions. The NEPA analysis is always available to the public and in contested hearings may be tested at length publicly through cross-examination.

Finally, with respect to recommendation 3, I would note that Commission and board decisions frequently reference and incorporate elements of the cost-benefit analysis. Hearing board decisions are always publicly available. The Commissioners have also taken steps to make public the staff analyses and recommendations which serve as the bases for their own decisions on major regulatory issues. While these NRC initiatives are perhaps somewhat less structured than the procedures contemplated in recommendations 2 and 3, I believe they are consistent with the intent of those recommendations.

The NRC staff has not been able to conduct a detailed review of Professor Baram's study in the time available, but would be willing to do so if requested by the Administrative Conference. However, the staff has examined the portion of the report focusing on NRC and believes that in some instances it mischaracterizes NRC analytical efforts and is somewhat dated (see attached comments).

If I may be of further assistance, please feel free to contact me regarding this matter.

Sincerely,


Joseph M. Hendrie
Chairman

Some Preliminary NRC Staff Observations on Professor
Baram's Study "Cost Benefit Analysis in Energy
Decision-Making of the Nuclear Regulatory Commission"

The NRC staff has not had time to study Professor Baram's report in detail in the time available for commenting on the recommendations. Some preliminary observations are noted below. In addition, the NRC staff notes that the Appendix A which focused on the NRC is more than a year old and thus does not reflect some important recent judicial decisions concerning cases cited.

1. The study could be improved by focusing on some rule-making proceeding other than the Appendix I proceeding as an example of use of cost-benefit analysis in NRC decisions. Appendix I was a unique proceeding which combined both Atomic Energy Act and NEPA considerations.
2. The study indicates that the Seabrook transmission line decision represented a departure from past practice in that substantial weight was given to unquantified environmental values. There are many other occasions where NRC has given similar substantial weight to these kinds of environmental impacts (e.g., evaluation of cooling systems for Indian Point and Brunswick, and improving discharge water quality in Maine Yankee).
3. The discussion of the Maine Yankee case would be improved by an analysis of the Appeal Board decision in the case.
4. Whether or not the Energy Reorganization Act precludes NRC use of cost-benefit analyses in Atomic Energy Act decisions can be argued either way. However, if cost-benefit analyses are not used, then there must be some substitute method for addressing the competing considerations involved in public safety decisions. It would be helpful if a discussion were added regarding such substitute methods and how they would comply with the reorganization act.
5. The value-impact guidelines mentioned on page A-19 are a preliminary version specific to the Office of Standards Development and are not the general guidelines adopted by the Commission in January 1978.

ENCLOSURE A
(ITEM 3) - MEMO FM CHILK TO GOSSICK