



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

October 25, 2007

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-07-0134

TITLE: EVALUATION OF THE OVERALL EFFECTIVENESS OF THE
RULEMAKING PROCESS IMPROVEMENT
IMPLEMENTATION PLAN

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of October 25, 2007.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, reading "Annette Vietti-Cook".

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Klein
Commissioner Jaczko
Commissioner Lyons
OGC
EDO
PDR

VOTING SUMMARY - SECY-07-0134

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN	X				X	9/21/07
COMR. JACZKO	X				X	10/2/07
COMR. LYONS	X				X	9/14/07

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on October 25, 2007.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN KLEIN
SUBJECT: SECY-07-0134 - EVALUATION OF THE OVERALL
EFFECTIVENESS OF THE RULEMAKING PROCESS
IMPROVEMENT IMPLEMENTATION PLAN

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached XX None _____



SIGNATURE

9/21/07

DATE

Entered on "STARS" Yes No _____

Chairman Klein's Comments on SECY-07-0134

I approve all four of the staff's recommendations to make additional improvements to the agency's rulemaking process. I expect the implementation of these and other recommendations in SECY-07-0134, "Evaluation of the Overall Effectiveness of the Rulemaking Process Improvement Implementation Plan," along with continued efforts to make process improvements that are described in the staff's Rulemaking Process Improvement Implementation Plan, to enhance the effectiveness and efficiency of the agency's rulemaking process.

Specifically, I approve granting the authority to the Director of the Office of Federal & State Management & Environmental Management Programs (FSME) to waive the development and submission of rulemaking plans. This will allow the FSME Office Director to forego development and submission of a rulemaking plan when that is determined to be the most efficient approach. Granting this authority would be consistent with the Commission's previous decision to grant the same authority to the director of Office of Nuclear Reactor Regulation (NRR).

In addition, I approve granting the authority to FSME to release draft rule text, statements of consideration, and the technical basis for public review and to hold workshops prior to submission of a proposed rule to the Commission. I believe that receiving early public feedback on draft rule language may help the staff to craft more effective rule language early in the process, and that earlier interaction of this kind can reduce the overall effort required to publish a proposed rule.

With respect to the role of the Committee to Review Generic Requirements (CRGR) in the rulemaking process, I approve the recommendation to eliminate the Committee's review of rulemaking tasks. A rule package includes a regulatory analysis that supports the rulemaking, and the legal perspective is addressed by the Office of the General Counsel in support of the technical offices. In addition, rulemaking packages are subject to an extensive concurrence process which typically allows all offices to concur prior to the CRGR review. These and other inherent activities as part of the rulemaking process provide sufficient opportunity for the agency's experts to identify any potential backfit issues, and thus justify the removal of the Committee's review of rulemaking tasks.

Lastly, I approve the staff providing proposed rule packages to the Advisory Committee on Reactor Safeguards (ACRS) for information, at the same time a proposed rule is issued for public comment. I agree that the ACRS review at the proposed rule stage can be eliminated for rulemakings that do not contain important or controversial technical areas. Thus, at its discretion, the ACRS can review and comment on the proposed rule, and if necessary, request a briefing. The staff should then address comments, if any, generated by the ACRS on the proposed rule package. For the draft final rule, the ACRS should continue its practice of reviewing the rule package prior to its submittal for Commission review and approval.

The subject SECY paper identifies plethora of good ideas and recommendations, including those that the staff had previously identified through similar efforts in CY2002, and again in CY2006, for improving the effectiveness and efficiency of the rulemaking process. The staff should continue in its planned efforts to look for opportunities to improve the process. However, at this juncture, the staff should focus its effort on execution of the currently planned and approved activities and recommendations.


Dale E. Klein
9/21/07
Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

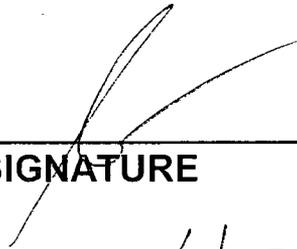
FROM: COMMISSIONER JACZKO

SUBJECT: SECY-07-0134 - EVALUATION OF THE OVERALL
EFFECTIVENESS OF THE RULEMAKING PROCESS
IMPROVEMENT IMPLEMENTATION PLAN

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___



SIGNATURE

6/2/07

DATE

Entered on "STARS" Yes X No _____

Commissioner Jaczko's Comments on SECY-07-0134
Evaluation of the Overall Effectiveness of the Rulemaking Process Improvement
Implementation Plan

I approve of the majority of recommendations from the staff in this paper and I appreciate the staff's efforts to continue to find ways to make this rulemaking process more effective. I believe, however, that the Commission needs to approve of some more fundamental changes in order to provide the staff with the tools it needs in order to make dramatic improvements to this process.

Regarding the recommendations, I approve of the delegation of authority to the Director of FSME to waive the development and submission of rulemaking plans. I also encourage the Director of FSME to simplify rulemaking plans when they are used. I also approve of delegating the authority to the Director of FSME to release draft rule text, statements of consideration, and the technical basis for public review, as well as the ability to hold workshops, prior to submission of a proposed rule to the Commission. I believe this will allow stakeholders to play an integral role in ensuring that our draft proposed rules are well vetted and high-quality products before they are issued for formal comment. I also support the staff's proposal to provide ACRS with proposed rule packages at the public comment stage and to limit briefings on rulemaking to those where the ACRS requests a briefing.

I do, however, have a concern with the recommendation to remove the CRGR from the review of current and future rulemaking packages. The CRGR was established to perform a function required by the agency's current backfit regulations. If the CRGR is no longer necessary for this function, the staff should look at this issue holistically rather than simply removing the Committee's role in reviewing rulemakings. Moreover, according to staff, removing the CRGR review does not actually provide for dramatic efficiencies in the rulemaking process, but only two to four weeks, at best. Given all of this, I do not support waiving the CRGR review at this time. I believe it would be useful for the staff to provide a paper analyzing the current function and appropriate role of the CRGR and would reconsider my position on eliminating CRGR review of rulemaking packages at that time.

The four specific recommendations identified by the staff in this paper were those aimed at finding efficiencies and improving timeliness in the rulemaking process. But as the attachment to this paper clearly indicates, gaining efficiency and timeliness are not the only things that matter when seeking to improve the effectiveness of the rulemaking process. As the staff explains, one of the most fundamental keys to understanding and improving the rulemaking process is better accountability of the technical basis for the rule. Therefore, I support the staff's recommendations outlined in section 2.1.c. of the enclosure, "Assessment of Rulemaking Process Improvements," which are aimed at continuing the emphasis on the development of a complete and adequate technical basis prior to initiating the actual rulemaking.

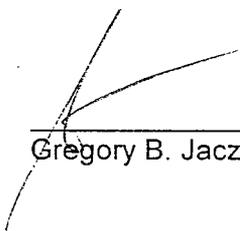
It appears from the explanation that much of the problem with the technical basis development is because it is considered to be outside of the scope of the rulemaking process itself. Allowing the technical basis to be developed concurrently with the rule may provide for immediate time savings, but those savings come at the cost of a number of inefficiencies later in the process. I believe that in order to ensure the technical basis

is appropriately developed before the traditional rulemaking, it must be considered the first step of the rulemaking process rather than a separate or concurrent process.

Therefore, staff should ensure that whenever a rulemaking is initiated, the first step of that rulemaking - before the development of the rule language itself - should be the development of the technical basis to support the rule. This technical basis should be tracked by the EDO as part of the entire rulemaking effort and appropriate metrics should be assigned to the development of technical bases. The completion of the technical basis will provide a natural point in the process to allow for an informed decision regarding the future of the rulemaking effort.

I also believe that the Petition for Rulemaking process needs some increased attention and improvement. There does not appear to be recognizable consistency within our process for deciding when rulemaking petitions are published for comment, how long it takes us to respond to the petitions, or the extent and method of the involvement of the petitioner. Rulemaking petitions are an important avenue for public participation, and our treatment of them understandably has a direct impact on the public's confidence in our ability and desire to hear their concerns. Therefore, I believe that, in addition to the recommendation identified in section 4.1.a of the enclosure of reviewing the way other Federal agencies manage petition for rulemaking processes, the staff's overall effort to improve the petition for rulemaking process should specifically focus on improvements to consistency and transparency of the process. The staff should provide the Commission a paper on the results of this review and recommendations for improvements in this area.

Finally, I would just like to add that I appreciate the staff's efforts to improve the rulemaking process. As I mentioned in my vote on the Fiscal Year 2009, budget, I believe rulemakings are at the heart of every agency activity. Whether generated by the Commission, petitioners, or legislation, rulemakings are essential translations of policy into rule, and they often demand immediate and thorough attention. I know the staff works hard to make this happen effectively and I look forward to continued improvements in this area.



Gregory B. Jaczko

Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: SECY-07-0134 - EVALUATION OF THE OVERALL
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IMPROVEMENT IMPLEMENTATION PLAN

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____



SIGNATURE
9/14/07

DATE

Entered on "STARS" Yes ✓ No _____

Commissioner Lyons' Comments on SECY-07-0134

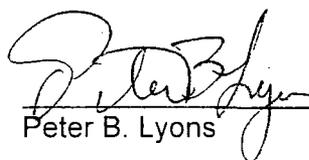
I approve the staff's recommendation for process improvements to allow the staff to streamline the rulemaking process. In particular, I agree with the staff's recommendation that the Commission extend to the Director of FSME the authority to waive the development and submission of rulemaking plans in consultation with the General Counsel. I also agree with the staff that the Commission should extend to FSME the authority to release draft rule text, statements of consideration, and the technical bases for public review and to hold workshops prior to submission of a proposed rule.

I approve the staff's proposal regarding the CRGR's involvement with respect to rulemaking packages. The CRGR should be consulted prior to the publication of a final rule in order to assess backfit questions and should be alerted to any statements the Agency intends to make regarding backfit in the proposed rule. It is important that the Agency maintains a consistent approach to backfit matters, which is a primary responsibility of the CRGR.

Likewise, I approve the proposal with respect to the timing of ACRS involvement. The staff's proposal would eliminate automatic ACRS review at the proposed rule stage for rulemakings that do not involve significant or controversial technical issues. However, the ACRS would receive the draft rulemaking package for information and would comment at its discretion. The ACRS would also receive briefings at the proposed rule stage at its request. The staff's proposal would continue to have ACRS review at the final rule stage. I continue to value the ACRS' input on rulemaking efforts and believe the staff's proposal provides for efficient and constructive engagement.

I wish to highlight the working group's recommendation to increase the emphasis on issuing draft implementation guidance in conjunction with the issuance of proposed rules for public comment. I wholly agree that efficiencies in both rule development and implementation can be gained by providing the guidance up front. Therefore, guidance should be provided at the proposed rule stage with respect to rulemakings involving safety and security regulations that affect NRC's expectations of its licensees.

I wish to also highlight the working group's recommendation regarding the need for the Agency to look for efficiencies in the NRC petition process with a goal of reducing the time needed to complete an action. The timely resolution of petitions was also raised by representatives of the OAS/CRCPD during an August 21, 2007 Commission meeting as an area that needs improvement. I agreed that the Agency should do more to be more timely, and I continue to support proposals to improve this area.

 9/14/07
Peter B. Lyons Date