

POLICY ISSUE NOTATION VOTE

July 29, 2013

SECY-13-0080

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

SUBJECT: FINAL PLAN FOR RETROSPECTIVE ANALYSIS OF EXISTING RULES

PURPOSE:

The purpose of this paper is to request Commission approval of the U.S. Nuclear Regulatory Commission's (NRC) final Plan for retrospective analysis of existing rules (Enclosure 1) and the *Federal Register* notice (FRN) that would announce the availability of the final Plan (Enclosure 2). This paper does not address any new commitments or resource implications.

SUMMARY:

The final Plan and its companion FRN are offered in response to: 1) the Staff Requirements Memorandum (SRM) on SECY-12-0076, "[Plan for Retrospective Analysis of Existing Rules](#)" (ML122280346) and 2) the commitment that the NRC made to publish a final Plan (see "[Draft Plan for Retrospective Analysis of Existing Rules](#)" (ML12305A373)). The SRM-12-0076 states that, in developing the final Plan, "staff will need to incorporate any activities arising from Commission direction on the cumulative effects of regulation notation vote paper, due to the Commission in the fall of 2012." The SRM-12-0076 further states that staff should "take advantage of ongoing opportunities to evaluate the effectiveness of existing significant regulations and whether the burden imposed is commensurate with our regulatory objectives."

BACKGROUND:

This action is a part of the NRC's voluntary implementation of Executive Order (EO) 13579, "[Regulation and Independent Regulatory Agencies](#)," issued by President Obama on July 11, 2011. EO 13579 recommended that, to the extent permitted by law, independent regulatory

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agencies should follow the key principles of EO 13563, "[Improving Regulation and Regulatory Review](#)." The key principles of EO 13563 were designed to promote public participation, improve integration and innovation, promote flexibility and freedom of choice, and ensure scientific integrity during the rulemaking process in order to create a regulatory system that protects public health, welfare, safety, and the environment while promoting economic growth, innovation, competitiveness, and job creation. As part of this effort, EO 13579 requests that independent agencies issue public plans for periodic retrospective analysis of their existing "significant regulations." Retrospective analysis should identify "significant regulations" that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in order to achieve the agency's regulatory objective.

On November 16, 2011, the NRC published a notice of availability of its [initial Plan](#) (ML112690277) in the *Federal Register* (76 FR 70913). The NRC did not solicit public comment in November 2011. Instead, the initial Plan indicated that an updated draft Plan would be made available for public comment by the end of calendar year 2012. The NRC also posted its initial Plan on [its Open Government and Plans, Budget, and Performance Web pages](#).

Using the November 2011 initial Plan as a base document, the NRC staff developed the draft Plan and published it for public comment on November 23, 2012 (77 FR 70123). The 60-day comment period ended on February 6, 2013. The NRC received eight comment letters on the draft Plan from State organizations, licensees, industry organizations, and citizens.

DISCUSSION:

Public Comments

The commenters raised the following six issues: 1) a recommendation that the final Plan include a section requiring review of existing non-power reactors (NPR) regulations; 2) a suggestion that the intent of the retrospective review could be met through addressing the cumulative effects of NRC regulatory actions, rulemaking and other NRC regulatory processes; 3) general support for the draft Plan; 4) claims that the NRC should improve its openness and transparency; 5) suggestions for technical improvements (e.g., better ways to provide links to documents, etc.); and 6) claims that thorium is incorrectly classified under the 1954 Atomic Energy Act (AEA). The FRN that would announce the availability of the final Plan (Enclosure 2) includes a more detailed summary of the comments received and the NRC's responses to the comments. The final Plan was not revised as a result of the public comments.

Revisions Included in Final Plan

The final Plan includes a summary of the six issues raised by the commenters (see Section I.D.2). Also, the final Plan includes an update on the NRC's activities related to the cumulative effects of rulemaking (see Section IV.D.3). Rather than list each of the NRC's planned rulemakings for fiscal year (FY) 2013-2014, the final Plan provides a link to the Web site where the reader can access the most current Unified Agenda (see Section III.C). On May 3, 2013 (78 FR 24886), the NRC published a proposed rule to streamline its process for addressing petitions for rulemaking. Section IV.G.4 of the final Plan, "Opportunities for Public Participation," discusses the goals of that proposed rulemaking. Section IV.I, "Regular Updates

to Guidance Documents,” has been revised to not only illustrate the range of NRC guidance documents, but also to better describe the process whereby Regulatory Guides are developed, issued, and updated.

Process Improvements

While developing the final Plan, the NRC staff identified changes to improve the clarity and transparency of the NRC’s processes for compliance with Section 610 of the Regulatory Flexibility Act (RFA) and Section 212 of the Small Business Regulatory Enforcement Fairness Act (SBREFA). The changes are briefly summarized below. For a more detailed summary, see the FRN that would announce the availability of the final Plan (Enclosure 2).

A. Regulatory Flexibility Act Compliance

Section 610 of the RFA requires agencies to review those regulations that have or will have a *significant* economic impact on a *substantial* number of small entities every 10 years after publication of such rules as final rules. The purpose of the periodic review is to determine whether the rules should be unchanged, amended, or rescinded.

The NRC staff will update its internal procedures to include a process for submitting Unified Agenda¹ entries for those rulemakings that require a Section 610 periodic review. Those entries will be added as a periodic review initiation entry in the “Pre-rule” section of the Unified Agenda and will solicit public comment. The NRC will publish the results of the periodic review in the “Completed Actions” section of the Unified Agenda.

To further improve transparency, the NRC staff will update its [RFA procedures public Web site](#) to include a list of all final NRC rules that impact small entities and an indication of whether the rules must undergo a periodic review required by Section 610 of the RFA. This Web site will also include a link to the periodic review initiation and completion entries in the Unified Agenda for each rulemaking that must undergo a Section 610 periodic review.

B. Small Business Regulatory Enforcement Fairness Act Compliance

Section 212 of the SBREFA requires that for each rulemaking that requires a Regulatory Flexibility Analysis under 5 U.S.C. 605(b), the agency must publish a “small entity compliance guide.” The agency is required to publish, distribute, and post on its public Web site compliance guides on the same date of publication of the final rule. In addition, Section 212 of the SBREFA requires that the head of each agency submit an annual report to the appropriate Congressional Committees describing the status of the agency's compliance with SBREFA.

The NRC staff will update its internal procedures to include a listing of the NRC’s small entity compliance guides on the previously mentioned Web site that lists all NRC rules that impact small entities and include a link to the NRC’s most current status report to Congress.

¹ For the most current NRC Unified Agenda, see <http://www.reginfo.gov/public/do/eAgendaMain> or <http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/unified-agenda.html>.

RECOMMENDATION:

The staff recommends that the Commission take the following actions:

1. Approve the final Plan, which will be published on the NRC's Open Government and Plans, Budget, and Performance Web pages; and
2. Approve the FRN announcing the availability of the final Plan.

RESOURCE:

The staff estimates that business line resources required to publish the final Plan will be nominal. The Office of Administration has resources within its FY 2013 and 2014 Corporate Support Business Line and Corporate Rulemaking Product Line to support this effort.

COORDINATION:

The Office of the General Counsel has no legal objection to the draft Plan. The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objections.

/RA Darren Ash for/

R. W. Borchardt
Executive Director
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Enclosures:

1. Final Plan ("Plan for Retrospective Analysis of Existing Rules")
2. *Federal Register* Notice

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*e-mail concurrence

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Final Plan "Plan for Retrospective Analysis of Existing Rules"

Enclosure 1

Federal Register Notice

Enclosure 2