

Proposed Rules

Federal Register

Vol. 68, No. 75

Friday, April 18, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Regulatory Analysis Guidelines: Proposed Criteria for the Treatment of Individual Requirements in a Regulatory Analysis

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is making available for public comment proposed criteria for the treatment of individual requirements in a regulatory analysis. The concern is that aggregating or "bundling" different requirements in a single analysis could potentially mask the inclusion of an inappropriate individual requirement. Therefore, the NRC proposes to modify its Regulatory Analysis Guidelines, NUREG/BR-0058, Rev. 3 by adding guidance to address this concern.

DATES: Submit comments on the proposed criteria by July 2, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. ATTN: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays (Telephone 301-415-1678).

You may also provide comments via the NRC's interactive rulemaking Web site at <http://ruleforum.llnl.gov>. This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415-5905 (e-mail: CAG@nrc.gov).

Certain documents related to these proposed criteria, including comments received and the "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," NUREG/BR-0058, Rev. 3, July 2000, may be examined, and/or copied for a fee, at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The documents listed below are also accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html> under the following ADAMS accession numbers:

Regulatory Guide 1.174:

ML003740133.

Regulatory Analysis Guidelines, NUREG/BR-0058, Rev. 3:

ML003738939.

Regulations Handbook, NUREG/BR-0053, Rev. 5: ML011010183.

Commission paper, SECY-00-0198: ML003747699.

SRM regarding SECY-00-0198:

ML010190405.

Commission paper, SECY-01-0134: ML011970363.

SRM regarding SECY-01-0134:

ML012760353.

Commission paper, SECY-01-0162: ML012120024.

SRM regarding SECY-01-0162:

ML013650390.

Commission paper, SECY-02-0225: ML023440333.

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference Staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT:

Brian Richter, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001, telephone (301) 415-1978, e-mail pdr@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

In evaluating a proposed regulatory initiative, the NRC usually performs a regulatory analysis for the entire rule to determine whether or not it is justified. However, bundling different requirements in a single analysis could potentially mask the inclusion of an inappropriate individual requirement.

In the case of a rule that provides a voluntary alternative to current requirements, the net benefit from the relaxation of one requirement could potentially support a second requirement that is not cost-justified. Similarly, in the case of other types of rules, including those subject to backfit analysis, the net benefit from one requirement could potentially support another requirement that is not cost-justified.

The issue of bundling different requirements in a single rulemaking has been raised by the Commission and the NRC staff in a number of contexts. In SECY-00-0198, "Status Report on Study of Risk-Informed Changes to the Technical Requirements of 10 CFR part 50 (Option 3) and Recommendations on Risk-Informed Changes to 10 CFR 50.44 (Combustible Gas Control)," dated September 14, 2000, the NRC staff discussed development of a voluntary risk-informed alternative rule. The NRC staff recommended not to allow selective implementation of parts of the voluntary alternative and not to apply the Backfit Rule. In a staff requirements memorandum (SRM) dated January 19, 2001, the Commission agreed that selective implementation of individual elements of a risk-informed alternative should not be permitted. The Commission also agreed that, since implementation of the risk-informed alternative version of 10 CFR 50.44 is voluntary, a backfit analysis of that version is not required. Furthermore, the Commission stated that:

[A] disciplined, meaningful, and scrutable process needs to be in place to justify any new requirements that are added as a result of the development of risk-informed alternative versions of regulations. Just as any burden reduction must be demonstrated to be of little or no safety significance, any new requirement should be justifiable on some cost-benefit basis. The Commission challenges the staff to establish such a criterion in a manner that adds fairness and equity without adding significant complexity. The staff should develop a proposed resolution for this issue and provide it to the Commission for approval.

This issue once again surfaced in the fitness-for-duty rule. In SECY-01-0134, "Final Rule Amending the Fitness-for-duty Rule," dated July 23, 2001, the NRC staff recommended withdrawing the OMB clearance request for a final rule and developing a new notice of proposed rulemaking. In an SRM dated