

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: COMSGB-15-0003: COMMISSION INVOLVEMENT IN
EARLY STAGES OF RULEMAKING

Approved XX Disapproved _____ Abstain _____ Not Participating _____

COMMENTS: Below _____ Attached XX None _____



SIGNATURE

08/ 4 /15

DATE

Entered on "STARS" Yes ✓ No _____

Commissioner Svinicki's Comments on COMSGB-15-0003
Commission Involvement in Early Stages of Rulemaking

I approve the Chairman's proposal, which is very thoughtfully described in his COMM. I do so with a number of misgivings, however, which do not revolve around the Chairman's COMM, *per se*, but rather involve the general atmospheric within which we take this action.

First, it is important that the appropriate balance be struck between taking our own initiative while respecting that our appropriations subcommittees, in the House and Senate, have constructed a record during their budget oversight of the NRC expressing some apparent will – potentially – to legislate on this topic. We may have resolution of this uncertainty within the next few months. Certainly, if any provision is ultimately enacted, the NRC must conform to it.

Second, and certainly more philosophically, it will be difficult for the NRC staff to assess objectively the appropriate role of the Commission – something that leaders and executives do not traditionally ask their staff to define for them and thereby putting the NRC staff in rather an awkward position. Moreover, the staff will be quite naturally reluctant to recommend the re-insertion of the Commission into the rulemaking process in areas relinquished to the staff previously. To do so would be a tacit admission by the staff itself that the staff has failed to exercise the appropriate discipline in the rulemaking process (as I believe has happened) and that a more intense supervision of their work is now needed. This would require a level of ego-less, self-awareness that humans rarely exhibit in large bureaucracies.

Third, if the staff is to prepare this plan for a plan to address the issue of Commission involvement, their recommendation should contain, as one element, a proposal to return the Committee to Review Generic Requirements to a role adding the value that its name implies, rather than the paper tiger it has become. Proposed charter amendments to achieve this should be included in the plan.

Lastly, the prescription that this plan for a plan should include “proposed measures to minimize the impact on the overall length of the rulemaking process” is the *coup de grâce*, potentially invalidating the authenticity of the entire exercise. I do not interpret Congress's potential concern as having anything to do with the timeliness of the Commission's involvement. Of course having the Commission consider something will add time. We know that now. Rulemaking is rarely or perhaps never an urgent process; this is the reason other immediately effective instruments exist. The question arises over whether the Commission's early involvement will eliminate the wasting of resources on things that the Commission – with its broader, executive perspective – will not ultimately support. The staff has no clear basis for answering this question, although a look at recent votes on draft proposed rules may be enlightening. In recent cases, this Commission has been providing modifications of a fairly significant nature. To the extent that the staff would allege that we have other opportunities for weighing in, I say this: I would be surprised if any of my colleagues could attest that the scant information we receive on proposed and ongoing rulemaking activities provided to us in the budget proposal provides anywhere near sufficient information to opine meaningfully on this question.

Much as we set expectations for the agency, the Congress sets expectations for us – the members of this Commission. The Congress seems to be expressing its view that the Commission has absented itself too much from the early stages of the rulemaking and priority setting process. Perhaps we should listen.



Kristine L. Svinicki

08/ 4 /15

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Ostendorff

SUBJECT: COMSGB-15-0003: COMMISSION INVOLVEMENT IN
EARLY STAGES OF RULEMAKING

Approved X Disapproved Abstain Not Participating

COMMENTS: Below X Attached None

I approve the proposal contained in COMSGB-15-0003, "Commission Involvement in Early Stages of Rulemaking," and applaud the Chairman for initiating his proposal.

Entered in STARS

Yes ✓

No


Signature

 7/6/15
Date

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Baran

SUBJECT: COMSGB-15-0003: COMMISSION INVOLVEMENT IN
EARLY STAGES OF RULEMAKING

Approved XX Disapproved _____ Abstain _____ Not Participating _____

COMMENTS: Below _____ Attached XX None _____

Entered in STARS

Yes XX

No _____


Signature

7/20/15
Date

**Commissioner Baran's Comments on COMSGB-15-0003,
"Commission Involvement in Early Stages of Rulemaking"**

I agree with Chairman Burns that the Commission would benefit from the staff's analysis of options for increasing the Commission's involvement in the early stages of the rulemaking process. We should have the NRC staff's assessment and recommendations before modifying the rulemaking process.

I share the Chairman's interest in avoiding the significant expenditure of agency resources on rulemakings that may not have Commission support. It may be appropriate for the Commission to be involved in the initiation of each rulemaking. However, the result of the Commission's involvement should be increased efficiency and more timely rulemakings, not unnecessary expenditures and a slower process.

In looking at the history of agency rulemaking, one option for increasing the Commission's involvement in the rulemaking process would be to reinstate the requirement for a detailed rulemaking plan prior to developing the regulatory basis document that itself proceeds a draft proposed rule. I believe a thorough staff evaluation of the impacts of this approach is important as it may have significant unintended consequences. If the goal of making a change is to avoid expending substantial resources on a rulemaking before the Commission has approved it, this option may have the opposite effect. Experience shows that adding the step of preparing a rulemaking plan likely would delay an already lengthy rulemaking process. When the staff analyzed the rulemaking process in 2002, it found that rulemaking plans were adding between six months and two and a half years to the rulemaking process. That represents a considerable investment of resources before the Commission has the opportunity to weigh in on whether to proceed with a rulemaking. And as I understand it, this is one of the main reasons the Commission ultimately decided to move away from formal rulemaking plans.

The consequences of a requirement for rulemaking plans may be even more disproportionate if it were applied to routine rulemakings, such as the approval of particular dry cask designs or the incorporation of updated consensus standards into existing regulatory requirements. The Commission has delegated these straightforward rulemakings to the NRC staff, and the agency currently conducts about 20 of them each year.

Moreover, since the requirement for rulemaking plans was discontinued in 2006, NRC has made several revisions to the rulemaking process. These changes established rulemaking steps to achieve the purposes once served by detailed rulemaking plans without the significant related drawbacks. For example, the staff now prioritizes all rulemakings and presents the proposed prioritization to the Commission as part of the budget request; the staff now routinely publishes the draft regulatory basis for public comment and notifies the Commission when the regulatory basis is being published; and the staff more frequently seeks Commission approval to initiate rulemakings through notation vote papers. Reverting to rulemaking plans could conflict with these innovations.

The staff analysis should also consider the option of requiring the submission of a brief notation vote paper to the Commission seeking authorization to initiate any non-routine rulemaking. As a practical matter, the staff typically takes this step now. The most recent Common Prioritization of Rulemaking shows that the vast majority of non-routine rulemakings were initiated with Commission approval through a notation vote paper. As we have seen, a SECY paper seeking approval to initiate a rulemaking can be a concise document weighing the pros and cons of proceeding with a potential rule and outlining the expected resource

requirements for a rulemaking. This approach would ensure both accountability and efficiency; rulemakings would not begin without Commission approval and the staff would not expend significant resources seeking that approval.

There may be other options for enhancing early Commission involvement in rulemakings without increasing costs and lengthening timelines. I look forward to the staff's analysis of a range of possible approaches. Therefore, I approve the Chairman's proposal.