



OFFICE OF THE INSPECTOR GENERAL

U.S. NUCLEAR REGULATORY COMMISSION

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Audit of NRC's Regulatory Analysis Process

OIG-15-A-15

June 24, 2015



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

**OFFICE OF THE
INSPECTOR GENERAL**

June 24, 2015

MEMORANDUM TO: Mark A. Satorius
Executive Director for Operations

FROM: Stephen D. Dingbaum /RA/
Assistant Inspector General for Audits

SUBJECT: AUDIT OF NRC'S REGULATORY ANALYSIS PROCESS
(OIG-15-A-15)

Attached is the Office of the Inspector General's (OIG) audit report titled *Audit of NRC's Regulatory Analysis Process*.

The report presents the results of the subject audit. Following the June 18, 2015, exit conference, agency staff indicated that they had no formal comments for inclusion in this report.

Please provide information on actions taken or planned on each of the recommendations within 30 days of the date of this memorandum. Actions taken or planned are subject to OIG followup as stated in Management Directive 6.1.

We appreciate the cooperation extended to us by members of your staff during the audit. If you have any questions or comments about our report, please contact me at (301) 415-5915 or Eric Rivera, Team Leader, at (301) 415-7032.

Attachment: As stated



Office of the Inspector General

U.S. Nuclear Regulatory Commission
Defense Nuclear Facilities Safety Board

OIG-15-A-15

June 24, 2015

Results in Brief

Why We Did This Review

The Atomic Energy Act of 1954, as amended (42 U.S.C. 2011), and Energy Reorganization Act of 1974, authorize the Nuclear Regulatory Commission (NRC) to develop regulations that licensees must follow to protect public health and safety and the environment, and to promote the common defense and security.

NRC is authorized to establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear, source, and byproduct material. NRC uses regulatory analyses to evaluate proposed rulemaking actions to protect public health and safety.

NRC does not have a statutory mandate to conduct regulatory analyses, but voluntarily began performing them in 1976 to help ensure that its decisions to impose regulatory burdens on licensees are based on adequate information.

The audit objective was to determine the adequacy of NRC's regulatory analysis process.

Audit of NRC's Regulatory Analysis Process

What We Found

The agency's knowledge management techniques for regulatory analysis need improvement. NRC has a limited number of staff with cost estimating experience in regulatory analysis. The Office of Nuclear Reactor Regulation and the Office of Nuclear Material Safety and Safeguards each have one experienced person. The agency may be vulnerable to errors, delays, wasted effort, and flawed decisionmaking because of the limited experience of its cost estimators. It also increases the potential to make less than optimal rulemaking decisions because the NRC Commission uses regulatory analysis to determine whether to move forward with rulemaking.

In addition, the agency does not consistently document stakeholder input prior to the proposed rule stage. Rules may take several years between initiation and publication of the final rule. The project manager who initiates the rule is generally not the project manager who oversees publication of the final rule. Accordingly, new project managers may not have all the information they need to complete their job, may duplicate efforts, and the agency may not be fully informed when making rulemaking decisions.

What We Recommend

The report makes recommendations to improve the regulatory analysis process.

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ABBREVIATIONS AND ACRONYMS

ADAMS	Agencywide Documents Access and Management System
CER	Cumulative Effects of Regulation
FTE	full-time equivalents
GAO	U.S. Government Accountability Office
NMSS	Office of Nuclear Material Safety and Safeguards
NRC	Nuclear Regulatory Commission
NRR	Office of Nuclear Reactor Regulation
OIG	Office of the Inspector General
OMB	Office of Management and Budget
SECY	Office of the Secretary

I. BACKGROUND

The Atomic Energy Act of 1954, as amended (42 U.S.C. 2011), and Energy Reorganization Act of 1974, authorize the Nuclear Regulatory Commission (NRC) to develop regulations that licensees¹ must follow to protect public health and safety and the environment, and to promote the common defense and security. NRC is authorized to establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear, source, and byproduct material. NRC uses regulatory analysis to evaluate proposed rulemaking actions to protect public health and safety. These evaluations support the staff and the Commission in (1) determining whether the proposed actions are needed, (2) providing adequate justification for the proposed action, and (3) documenting a clear explanation of why a particular action was recommended. NRC does not have a statutory mandate to conduct regulatory analyses but voluntarily began performing them in 1976 to help ensure that its decisions to impose regulatory burdens on licensees are based on adequate information.

Office of Management and Budget (OMB) Memorandum, *Cumulative Effects of Regulations*, dated March 20, 2012, was issued to improve regulation and regulatory review by ensuring that, to the extent permitted by law, agencies take into account the costs of cumulative regulations.

¹ A company, organization, institution, or other entity to which NRC or an Agreement State has granted a general license or specific license to construct or operate a nuclear facility, or to receive, possess, use, transfer, or dispose of source material, byproduct material, or special nuclear material.

While NRC is not required to comply with this guidance, the agency implemented the steps suggested in the guidance through existing NRC processes.

NRC Guidance

Management Directive 6.3, *The Rulemaking Process*, July 22, 2013, communicates NRC's policy and commitment to develop high quality rules that are consistent with laws and regulatory requirements. This expresses NRC's intent to conduct rulemakings using an effective, efficient process that is open to the public and affords an opportunity for meaningful stakeholder participation in rulemaking proceedings. It also contains general organizational responsibilities for NRC components concerning the rulemaking process.

The following agency documents also provide guidance on regulatory analysis:

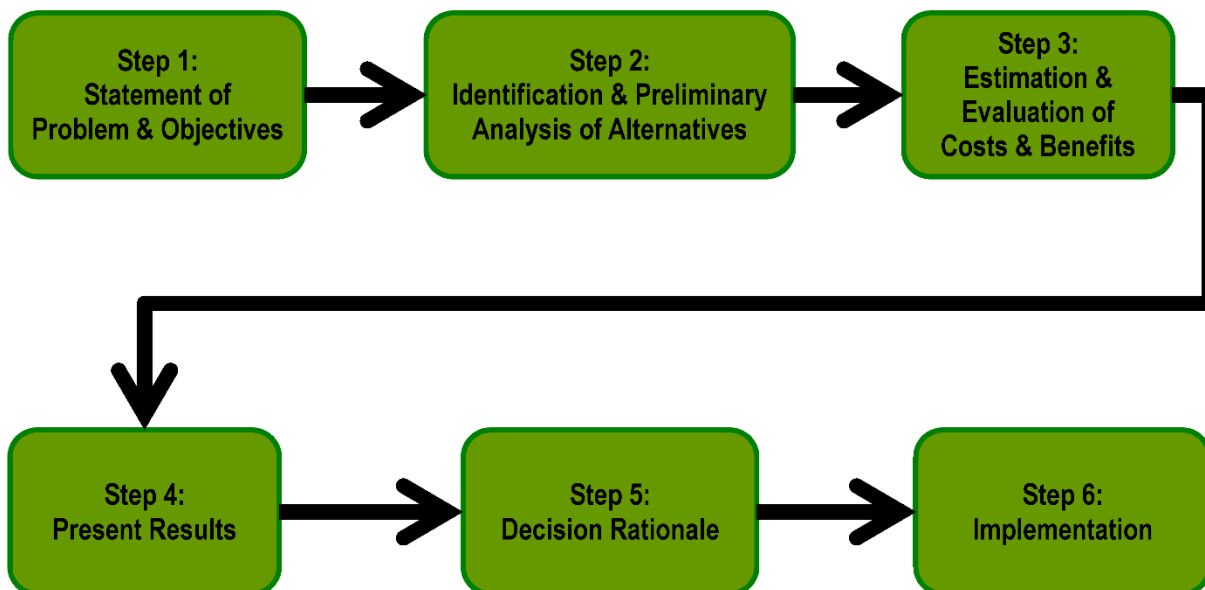
1. NUREG/BR-0058, Revision 4, *Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission*, September 2004, establishes a framework for regulatory analysis. These guidelines convey the agency's policy for the preparation and content of regulatory analyses, and contain a number of policy decisions that have broad implications for NRC, licensees, and the protection of public health and safety.
2. NUREG/BR-0184, *Regulatory Analysis Technical Evaluation Handbook*, January 1997, provides guidance for NRC regulatory analysts to promote preparation of quality regulatory analysis documents and to implement the policies of NUREG/BR-0058. It contains policy, concepts, and guidelines, and describes the six steps to preparing regulatory analyses. The Handbook also provides standardized methods for preparation and presentation of regulatory analyses. It states that NRC intends to periodically revise the Handbook as new and improved guidance, information, and methods become available.

Regulatory Analysis Process

NRC's regulatory analysis process includes six steps (see Figure 1) to ensure that the agency bases its decisions on adequate information

derived through a systematic and disciplined process that is open and transparent.

Figure 1: The Regulatory Analysis Process



Source: OIG generated

A regulatory analysis is not necessary for all rulemaking actions. For instance, regulatory analysis is not completed when staff initiate generic actions² including notices, policy statements, and generic letters that only transmit information and do not present new or revised staff positions, impose requirements, or recommend action. Regulatory analysis is also unnecessary in response to a congressional statute requiring new regulatory requirements and administrative or direct final rules.³

Regulatory analysis occurs in each phase of the rulemaking process. A preliminary draft regulatory analysis is conducted during the regulatory basis phase,⁴ a draft regulatory analysis during the proposed rule phase, and a final regulatory analysis during the final rule phase.

² Those actions that affect all, several, or a class of licensees.

³ A rule that does not contain significant technical or policy issues and is considered to be non-controversial.

⁴ The Office of Nuclear Material Safety and Safeguards considers the analysis prior to the proposed rule stage a general cost/benefit analysis rather than a regulatory analysis.

Cumulative Effects of Regulation (CER) Enhancements

On March 2, 2011, NRC's Executive Director for Operations issued *Consideration of the Cumulative Effects of Regulation in the Rulemaking Process* (SECY-11-0032). The Office of the Secretary (SECY) paper's⁵ purpose was to inform the Commission of the staff's plans to enhance NRC's rulemaking process to enable *explicit consideration* of CER. The staff proposed instituting rulemaking process enhancements to include increased interaction with external stakeholders during the regulatory analysis process, issuance of draft and final supporting guidance with proposed and final rulemakings, and explicit stakeholder requests for CER feedback.

SECY-12-0137, *Implementation of the Cumulative Effects of Regulation Process Changes*, October 5, 2012, represents a followup to the Commission's direction in response to SECY-11-0032. It describes interactions with stakeholders throughout all stages of the rulemaking process, the impact of CER implementation on other regulatory actions, and the staff's considerations of the need to quantify cumulative impacts of regulation. Steps 1-3 in Figure 1 are the points at which NRC solicits stakeholder input during the regulatory analysis process.

⁵ Policy, rulemaking, and adjudicatory matters, as well as general information, are provided to the Commission for consideration in a document style and format established specifically for the purpose.

Programmatic Responsibilities

NRC's Office of Nuclear Reactor Regulation (NRR) develops regulatory analyses for the operating reactors and new reactors rulemakings, while the Office of Nuclear Material Safety and Safeguards (NMSS) develops regulatory analyses for nuclear material, fuel facility, spent fuel storage and transportation, decommissioning and low-level waste rulemakings.

NRR's Policy and Rulemaking Branch has a total of seven full-time equivalents (FTE) for its Regulatory Analysis Team, including five cost estimators and two project managers. Currently there are four cost estimator vacancies on that team and the agency is actively trying to fill those positions.

NMSS Rulemaking and Project Management Branch has 1 FTE dedicated to developing regulatory analyses. The staff member currently in this position has been in the position for over five years.

II. OBJECTIVE

The audit objective was to determine the adequacy of NRC's regulatory analysis process. Appendix A contains information on the audit scope and methodology.

III. FINDINGS

NRC has initiated steps to improve the adequacy of the regulatory analysis process. Specifically, through implementation of CER processes, the agency solicits stakeholder input during the regulatory analysis process to help resolve issues that can lead to rulemaking implementation challenges. However, more needs to be done in the area of knowledge management. Specifically,

- A. There is a limited number of staff with cost estimating experience.
- B. There is inconsistent documentation of stakeholder input.

A. Limited Experienced Cost Analysts (Estimators)

NRC has a limited number of staff with cost estimating experience in regulatory analysis. This occurred because NRC (1) lacks a formal comprehensive cost estimator training/qualification program, (2) has not implemented established knowledge management techniques, and (3) has outdated cost estimating guidance. Limited experienced cost estimators may result in increased vulnerability to errors, delays, wasted effort, and flawed decisionmaking. This could also challenge the agency in fulfilling its regulatory mission.

What Is Required

Federal and agency standards require that management train employees, employ knowledge management techniques, and document internal controls.

Federal Standards

The U.S. Government Accountability Office (GAO) *Standards for Internal Control in the Federal Government* advises that management demonstrate a commitment to recruit, develop, train, and retain competent personnel to achieve an agency's objectives. In addition, management should enable individuals to develop competencies appropriate for key roles, and tailor training based on the needs of the role. Targeted training can and does improve performance and productivity. Moreover, training demonstrates to workers that their employer values them enough to invest in them, which improves loyalty and retention.

These standards also provide that management define succession plans for key roles, and chooses and trains succession candidates to assume key roles. These management responsibilities help the organization continue to achieve its objectives and mission. Most importantly, succession plans help to address the organization's need to replace, on a timely basis, competent personnel over the long term.

GAO standards also state that documentation represents a necessary part of effective internal control and is required for the efficient implementation and operating effectiveness of an organization. Documenting policies and procedures helps organizations maintain knowledge and mitigate the risk of having that knowledge limited to only a few employees. Moreover, management should periodically review policies and procedures for continued relevance and effectiveness. When there is a significant change in the process, management should review this process in a timely manner after the change and document the change.

NRC Guidance

NRC maintains a knowledge management Web site to improve information sharing and provides techniques that can be used within and outside the agency to capture relevant critical knowledge from existing staff and employees departing the agency. The site emphasizes that (1) where possible, the agency should recapture knowledge from former employees, and (2) throughout an NRC employee's career, the employee should keep learning and pass knowledge and experience on to others. This site stresses that a loss of critical knowledge could challenge the agency and office in fulfilling its mission. Additionally, this site contains valuable established knowledge management techniques.

NRR Office Instruction ADM-504, Revision 3, *Qualification Program*, effective February 16, 2015, states, "It is the policy of NRR that the qualification program shall be maintained to ensure the program reflects the skills needed for NRR to fulfill its mission." This formal program includes some of the following NRR positions: Reliability and Risk Analysts, Rulemaking Project Managers, License Renewal Project Managers, and Operating Reactor Licensing Project Managers. The Office Instruction states it is NRR's policy that employees possess the knowledge and skills necessary to effectively perform regulatory activities in their position. The guidance provides that one way the knowledge and skills for regulatory activities can be obtained is through formal training.

NMSS DILR SG 2, *Division of Intergovernmental Liaison and Rulemaking Staff Guidance, Rulemaking Project Manager Training Plan* provides the project manager with information to perform various policy and rulemaking activities. The plan includes sections on regulatory analysis, but it does

not contain a separate training plan or qualification program for cost estimators.

What We Found

NRC has a limited number of staff with cost estimating experience in regulatory analysis. NRR's Policy and Rulemaking Branch, Regulatory Analysis Team, currently comprises one experienced cost estimator who is eligible to retire (team leader), one experienced project manager, and one new project manager.⁶ This team is authorized seven FTE's, and is actively engaged in the hiring process. It is envisioned that after filling available vacancies, the composition of the Regulatory Analysis Team will be two project managers, four cost analysts, and the team leader (cost analyst) for a total of seven. NMSS has one FTE to conduct regulatory analysis cost estimates.

Why This Occurred

NRC has a limited number of staff with cost estimating experience because (1) the agency has no formal comprehensive cost estimator training/qualification program, (2) it does not implement or practice established knowledge management techniques, and (3) cost benefit guidance documents are outdated.

No Formal Comprehensive Training/Qualification Program

NRC does not have a formal comprehensive training program for cost estimators. Although NRR Office Instruction ADM-504 describes a qualification program for various NRR positions, the positions do not include cost estimators working on regulatory analysis.

NRR and NMSS staff and managers described several measures used for training cost estimators, but these measures do not constitute a formal or comprehensive approach. For example, the NRR regulatory analysis team leader provides training for rulemaking and regulatory analysis. For

⁶ During this audit, there was one new cost analyst who left the agency and one cost analyst who was on a 3-month rotation. The rotation ended March 6, 2015, and that employee did not stay in NRR.

study activities the team lead provides a scenario to the staff, then asks challenge questions to test their level of understanding. NRR has developed and maintained training videotapes on subjects such as writing regulations, a knowledge management strategy that has proven useful to staff. However, this practice stopped when NRR lost its one FTE dedicated to training because of the *Transforming Assets into Business Solutions* effort.⁷ After Office of the Inspector General (OIG) inquiries, NRR was able to locate some of the training tapes.

In addition, cost estimators maintain training journals or logs to record their reading assignments and other training; however, this is not practiced consistently. OIG reviewed the logs of two cost analysts and noted they were either blank or identified tasks but not the completion of tasks.

NMSS currently has a training plan for rulemaking project managers. This plan includes some emphasis on regulatory analysis. However, NMSS and other NRC offices with regulatory analysis responsibilities would benefit from a more comprehensive regulatory analysis training/qualification program.

Established Knowledge Management Techniques Need Improvement

NRC knowledge management techniques could be improved for staff preparing regulatory analysis. In the past, NRC was able to hire experienced experts directly from nuclear power plants and former licensees. These experts brought with them significant experience, which could be applied immediately to regulatory structures and thought processes used in rulemaking. These employees developed a core expertise for rulemaking and regulatory analysis within NRC; however, when these experienced employees retired, knowledge was not transferred to other employees and knowledge management techniques were not employed. As a result, when new cost estimators are hired, there are only two senior staff members to mentor or pass on knowledge.

⁷ The objectives of the *Transforming Assets into Business Solutions* effort were to (1) provide business solutions with a focus on enhancing performance while reducing overhead; (2) eliminate unnecessary duplication and increase centralization to improve the delivery of services; and (3) provide short- and long-term recommendations that would result in more efficient use of agency overhead resources.

Outdated Cost-Benefit Guidance Documents

The following NRC cost-benefit guidance documents related to regulatory analysis need to be updated: (1) NUREG/BR-0058, Revision 4, *Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission*, September 2004, and (2) NUREG/BR-0184, *Regulatory Analysis Technical Evaluation Handbook*, January 1997. Both documents represent the cornerstone of NRC's cost-benefit guidance. However, these documents do not reflect current methods and tools related to performing regulatory analyses.

On January 2, 2014, NRC staff issued SECY-14-0002, *Plan for Updating the U.S. Nuclear Regulatory Commission's Cost-Benefit Guidance*. The staff recommendation is to implement a two-phased approach to revise these guidance documents. Phase 1 was scheduled for completion between January 2014 and August 2015, and Phase 2 between June 2014 and July 2018.⁸ One of the reasons this update was delayed, is because of limited resources. OIG was informed that Phase 1 might be completed by the end of fiscal year 2015.

Why This Is Important

The agency may be vulnerable to errors, delays, wasted effort, and flawed decisionmaking because of the limited experience of its cost estimators. It also increases the potential to make less than optimal rulemaking decisions because the NRC Commission uses regulatory analysis to determine whether to move forward with a given rulemaking.

Recommendations

OIG recommends that the Executive Director for Operations

1. Develop and implement a formal training/qualification program for cost estimators. This training/qualification program can be incorporated into the office instructions and procedures of the NRC offices with regulatory analysis responsibilities.

⁸ SECY-14-0002 states that the milestone dates provided are estimates and may depend on availability of resources and Commission direction.

2. Implement established knowledge management techniques for the regulatory analysis program.
3. Update and implement the cost benefit guidance documents as planned in SECY-14-0002. Incorporate this guidance into office procedures by reference.

B. Inconsistent Documentation

The agency does not consistently document stakeholder input prior to the proposed rule stage. This occurs because NRC's rulemaking office procedures that require stakeholder input prior to the proposed rule stage do not describe how to document that input. As a result, there is a potential for information gathered during the regulatory analysis process to be lost, duplicated, or not fully considered by agency staff.

What Is Required

Federal Standards

GAO's *Standards for Internal Control in the Federal Government* convey that documentation is a means to retain organizational knowledge and mitigate the risk of having that knowledge limited to a few personnel. The standards also advise that management periodically review policies and procedures for continued relevance and effectiveness. If there is a significant change in the entity's process, management reviews this process in a timely manner after the change.

NRC Guidance

NRC's newly created knowledge management Web site provides employees with established techniques so that knowledge can be transferred to employees who need it to successfully accomplish agency objectives.

Additionally, agency CER procedures require solicitation of stakeholder input prior to the proposed rule stage⁹ and give staff the flexibility to determine how, and under what circumstances, it will interact with external stakeholders.

What We Found

The agency does not consistently document stakeholder input prior to the proposed rule stage. Rules may take several years between initiation and the publication of the final rule. For example, the Performance Based Emergency Core Cooling Systems Acceptance Criteria (10 Code of Federal Regulations 50.46c Fuel Cladding)/Part 50 rule was initiated in August 2008, and the final rule is expected to be published in February 2017.

The project manager who initiates the rule is generally not the project manager who oversees publication of the final rule. For example, the Containment Protection and Release Reduction Rule was initiated in 2011. During the development of this rule, there were 2 different project managers who, together, conducted 13 public meetings. One of the meetings was classified as a Category 3 meeting¹⁰ and was transcribed. The other meetings were classified as either Category 1 or 2 and two were transcribed. Although a meeting summary was documented in all cases, meeting summaries may not include specific information regarding stakeholder input.

Conversely, the Mitigation of Beyond-Design-Basis Events rulemaking was initiated in 2012 and there has been one project manager. Out of 12 public meetings, one Category 3 public meeting was conducted and transcribed. NRR also solicited stakeholder input via an Advanced Notice of Proposed Rulemaking.¹¹ NRC's practice is to document all comments

⁹ Per Federal regulations, all comments obtained during the proposed rule stage are retained and publicly available through NRC's document management system or www.regulations.gov. Input obtained prior to the proposed rule stage is not required to be publicly available.

¹⁰ See Appendix B for a full description of Category 1, 2, and 3 meetings.

¹¹ A formal method of soliciting early public involvement in the rulemaking process.

received in response to an Advanced Notice of Proposed Rulemaking in both Regulations.gov and NRC's document management system.

Why This Occurred

Office procedures that require solicitation of stakeholder input prior to the proposed rule do not describe how to document that input. The procedures provide several means for staff to solicit stakeholder input such as conducting public meetings, posting the regulatory basis or portions of it on regulations.gov, issuing Federal Register notices, or holding a Webinar or some equivalent electronic interaction. However, they do not state how to document the input received.

Why This Is Important

Many rules may take several years from initiation to final rule issuance. Because of this, project managers often change during the course of a rulemaking. If the staff does not document stakeholder input prior to the proposed rule stage, staff new to the project may not have all the information they need to complete their job and they may duplicate efforts. Further, knowledge that was gained may be lost and the agency may not be fully informed when making rulemaking decisions.

Recommendation

OIG recommends that the Executive Director for Operations

4. Develop and implement procedures to consistently document stakeholder input prior to the proposed rule stage.

IV. CONSOLIDATED LIST OF RECOMMENDATIONS

OIG recommends that the Executive Director for Operations

1. Develop and implement a formal training/qualification program for cost estimators. This training/qualification program can be incorporated into the office instructions and procedures of the NRC offices with regulatory analysis responsibilities.
2. Implement established knowledge management techniques for the regulatory analysis program.
3. Update and implement the cost benefit guidance documents as planned in SECY-14-0002. Incorporate this guidance into office procedures by reference.
4. Develop and implement procedures to consistently document stakeholder input prior to the proposed rule stage.

V. AGENCY COMMENTS

An exit conference was held with the agency on June 18, 2015. Prior to this meeting, agency management reviewed a discussion draft and provided comments that have been incorporated into this report as appropriate. As a result, agency management opted not to provide formal comments for inclusion in this report.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The audit objective was to determine the adequacy of NRC's regulatory analysis process.

Scope

This audit focused on assessing the adequacy of NRC's regulatory analysis process, which involves estimation and evaluation of benefits and costs. During this audit, OIG did not calculate or recalculate any cost benefit analyses. OIG requested and analyzed information from the agency for specific rulemaking activities with specific timeframes. At the agency's request, the audit scope was limited to regulatory analyses that started after implementation of the CER process, March 2, 2011. There were approximately seven regulatory analyses initiated after that date.

We conducted this performance audit at NRC headquarters in Rockville, Maryland, from October 2014 through April 2015. OIG reviewed and analyzed internal controls related to the audit objectives. Throughout the audit, auditors were aware of the possibility of fraud, waste, and abuse in the program.

Methodology

OIG reviewed relevant laws, regulations, and guidance, including OMB Circular No. A-4, *Regulatory Analysis*; OMB Memorandum, *Cumulative Effects of Regulation*; the *Atomic Energy Act of 1954*, as amended; Public Law 83-703, Administrative Procedures Act; Unfunded Mandates Reform Act; Regulatory Flexibility Act; Congressional Review Act; National Environmental Policy Act; Paperwork Reduction Act; and the Energy Reorganization Act. We also reviewed the following Federal Executive Orders and NRC Management Directives for specific information:

Executive

<u>Order</u>	<u>Title</u>
12866	Regulatory Planning and Review
13422	Further Amendment to Executive Order 12866
13563	Improving Regulation and Regulatory Review

Management

<u>Directive</u>	<u>Title</u>
6.3	The Rulemaking Process
6.6	Regulatory Guides
8.4	Management of Facility-Specific Backfitting and Information Collection

OIG reviewed agency guidance and documents, including NRR Office Instruction No. LIC-300, Revision 4, *Rulemaking Procedures*; Office of Federal and State Materials and Environmental Management Program's Policy and Procedure 6-10, Revision 2, *FSME Procedures for Preparation and Review of Rulemaking Packages*; NMSS DILR SG 2, *Division of Intergovernmental Liaison and Rulemaking Staff Guidance, Rulemaking Project Manager Training Plan*; NRR Office Instruction ADM-504, Revision 3, *Qualification Program; the Rulemaking Process Improvement Task Force Final Report to the Rulemaking Coordinating Committee*; the *2014-2015 Rulemaking Activity Plan*; and *NRC's Public Meeting Policy*.
OIG reviewed NRC's Rulemaker Web page and Knowledge Management Web sites. In addition, OIG reviewed the following NUREGs and SECY documents for specific information:

NUREG

<u>Number</u>	<u>Title</u>
BR-0058	Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission
BR-0184	Regulatory Analysis Technical Evaluation Handbook

SECY

<u>Number</u>	<u>Title</u>
14-0002	Plan for Updating the U.S. Nuclear Regulatory Commission's Cost-Benefit Guidance
11-0032	Consideration of the Cumulative Effects of Regulation in the Rulemaking Process

12-0137 Implementation of the Cumulative Effects of Regulation
(CER) Process Changes

OIG reviewed the Nuclear Energy Institute's Cumulative Impact Case Study Analysis and Recommendations that analyzed the costs of three NRC regulations that were estimated by the agency and compared to the actual costs spent by the industry. We also reviewed various guidance and audit reports for relevant information issued by GAO, the U.S. Securities and Exchange Commission, and the Federal Deposit Insurance Corporation. OIG also attended four Advisory Committee on Reactor Safeguards meetings specific to the rulemaking process.

OIG interviewed staff from NRR, NMSS, SECY, Office of Administration, and the Office of the Chief Human Capital Officer. In addition, OIG interviewed Nuclear Energy Institute officials and an official from the nuclear industry.

OIG performed benchmarking exercises with Securities and Exchange Commission, the Environmental Protection Agency, and the Federal Energy Regulatory Commission to identify best practices and lessons learned. Following the exercises, OIG shared relevant information with the agency.

The audit team participated in basic and advanced rulemaking courses presented by NRC staff. Following the training, and at OIG's request, NRR, NMSS, Office of New Reactors, and Office of the Chief Financial Officer, provided an overview meeting and presentation to the audit team on NRC's regulatory analysis program.

We conducted this performance audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit was conducted by Eric Rivera, Team Leader; Kevin Nietmann, Senior Technical Advisor; Terri Cooper, Audit Manager; Gail Butler, Senior Auditor; and Michael Steinberg, Senior Auditor.

Appendix B

Public Participation in NRC Meetings

Category	Description	Meeting Purpose	Examples	Level of Public Participation	Types of Information Provided	Followup
1	Typically held with one licensee, vendor, applicant, or potential applicant to discuss particular regulatory issues.	<p>To discuss one particular facility or site, or certified system or device, with an applicant or licensee regarding, for example, technical issues in an application, licensee actions, or inspection results.</p> <p>(At this type of meeting, NRC anticipates that the public would obtain factual information to assist in their understanding of the applicable regulatory issues and NRC actions.)</p>	Annual public meetings to discuss such items as plant performance, regulatory, predecisional, or enforcement conferences, meetings held prior to a facility restarting, as well as meetings held on licensing actions (or applications).	<p>The public is invited to observe the meeting consistent with past practice, and the public has the opportunity to communicate with the NRC after the business portion of the meeting, but before the meeting is adjourned. This does not preclude the licensee from responding to questions if they choose to do so.</p> <p>For meetings longer than 2 hours, one or more opportunities may be provided for the public to ask questions before the end of the meeting, if practicable.</p>	At a minimum, an agenda or a list of items to be discussed will be entered into Agencywide Documents Access and Management System (ADAMS). The ADAMS document accession number would be provided in the meeting notice that is posted at NRC's public Web site for access to any primary or background documents.	<p>No formal followup will be provided beyond the normal period for questions. Informal followup (telephone or e-mail) may be appropriate for certain questions that cannot be answered at the meeting.</p> <p>The public also has the option of writing or emailing the staff about particular concerns. These concerns will be considered by the staff as it deliberates on the issue. Feedback forms would also be provided at this type of meeting, so that comments can be reviewed and offices can track any planned improvements or resulting actions in their operating plans, as appropriate. Meeting summaries and participant lists will be publicly available in ADAMS.</p>

Source: OIG generated based on information from NRC's Public Meeting Web Site

Category	Description	Meeting Purpose	Examples	Level of Public Participation	Types of Information Provided	Followup
2	Typically held with a group of industry representatives, licensees, vendors or non-governmental organizations.	<p>For NRC to obtain feedback from the regulated community and other external stakeholders on issues that could potentially affect more than one licensee.</p> <p>At this type of meeting, NRC anticipates that the public would obtain factual information and provide the agency with feedback on the analysis of the issues, alternatives and/or decisions.</p>	Includes task force and industry groups (such as NEI or owners groups), or public interest and citizen group discussions that focus on issues that could apply to several facilities, such as plant system aging, license renewal, decommissioning, or spent fuel storage.	<p>The public is invited to discuss regulatory issues with the agency at designated points identified on the agenda.</p> <p>Generally, there will be more opportunities provided for the public to ask questions and provide comments at a meeting of this type than at a Category 1 meeting.</p>	An agenda, names of participants, and background documents will be entered into ADAMS, and the accession number will be provided in the meeting notice. A Web page with links to other appropriate background information will be made available at NRC's discretion. The ADAMS package and any link to a Web page will be at NRC's public Web site.	<p>Staff will provide answers to questions as appropriate during the meeting. Questions that cannot be answered at the meeting will be assigned to a designated staff person as an action item. Meeting summaries or any transcripts and participant lists would be provided in ADAMS and on the agency's public Web site.</p> <p>If a Web site is established, feedback forms will be provided as they are in Category 1 meetings, so that comments can be reviewed and offices can track any planned improvements or resulting actions in their operating plans, as appropriate.</p>

Source: OIG generated based on information from NRC's Public Meeting Web Site

Category	Description	Meeting Purpose	Examples	Level of Public Participation	Types of Information Provided	Followup
3	Typically held with representatives of non-government organizations, private citizens, interested parties, or various businesses or industries (other than those covered under Category 2) to fully engage them in a discussion on regulatory issues.	To maximize discussions with the public to ensure that their issues and concerns are presented, understood and considered. NRC anticipates that the public would work with the agency to facilitate the widest exchange of information, views, concerns and suggestions with regard to license-specific or generic regulatory issues.	Town hall or roundtable discussions, Environmental Impact Statement scoping meetings, workshops, the RIC, the Nuclear Safety Research Conference, or proposed rulemaking meetings.	Public participation is actively sought at this type of meeting, which has the widest participation opportunities and is specifically tailored for the public to comment and ask questions throughout the meeting.	An agenda, names of participants, and background documents will be entered into ADAMS. A Web page will be created for all relevant documents and a link to the required Web page on the public Web site.	Staff followup is similar to Category 2, but meeting summaries or transcripts and participant lists will be provided in ADAMS and linked to the Web site. Feedback forms will also be provided at this level meeting.

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TO REPORT FRAUD, WASTE, OR ABUSE

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COMMENTS AND SUGGESTIONS

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