

POLICY ISSUE
(Notation Vote)

August 10, 2007

SECY-07-0134

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operations /RA/

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

PURPOSE:

To provide the Commission with the working group's assessment of the effectiveness of improvements made to the agency's rulemaking process, and to request Commission approval for several new process improvements that will continue to allow staff to streamline the rulemaking process.

BACKGROUND:

In a Commission Staff Requirements Memorandum (SRM) (COMNJD-06-0004/COMEXM-06-0006), dated May 31, 2006, the staff was directed to:

1. Conduct an evaluation of the overall effectiveness of the inter-office Rulemaking Process Improvement Implementation Plan (RPIP) published in 2002.
2. Assess the effectiveness of the Commission's directives numbered 1 through 5 in the May 31, 2006, SRM aimed at improving the efficiency and timeliness of the rulemaking process.

CONTACTS: Harry Tovmassian, NRR/DPR
(301) 415-3092

Timothy Reed, NRR/DPR
(301) 415-1462

3. Identify any other potential options that could streamline the rulemaking process.
4. Address the feasibility, as well as advantages and disadvantages, of reducing contractor dependence in the rulemaking area, including addressing the necessary steps to ensure that when contracting is needed, it is accomplished in the most efficient and effective manner possible.
5. Examine ways to improve the early collaboration with affected offices, particularly, the Office of the General Counsel and the Office of Information Services, regarding allocation of resources prior to the proposed rule stage to make the most efficient use of resources.

The staff, in consultation with the Rulemaking Coordination Committee (RCC), formed a working group to address the Commission's directives. Because of organizational changes which have taken place since the SRM was issued, the composition of the working group included representatives from the Offices of Nuclear Reactor Regulation (NRR), Federal and State Materials and Environmental Programs (FSME), the General Counsel (OGC), and Administration (ADM). A charter for the working group (ADAMS Accession ML070190616) was developed and approved by the management of the participating offices. The working group coordinated the final product from its assessment with the Offices of Nuclear Security and Incident Response (NSIR), New Reactors (NRO), Nuclear Material Safety and Safeguards (NMSS), and Information Services (OIS).

A discussion of the working group's response to each of the five items identified above is provided in the enclosed working group report. The members of the RCC reviewed the working group's report and concur with the recommendations. The working group's major conclusions from the rulemaking streamlining effort are discussed below.

DISCUSSION:

The working group examined the NRC's rulemaking procedures to identify possible options to further streamline the rulemaking process. The enclosed report assesses the previous rulemaking process improvements (RPIs) that relate to process streamlining, and identifies additional actions to further improve the process. The working group found that many of the Rulemaking Process Improvement Plan (RPIP) recommendations have been implemented and some efficiencies have been realized. For those not implemented the reasons for not doing so are still valid. The working group concluded that some additional efficiencies can be obtained. The group provided 20 recommendations that would provide some measure of additional efficiency if properly implemented. These recommendations are discussed in detail in Sections 2 through 6 of the working group's report and summarized in Section 8. Half of the recommendations concern the technical basis for rules and the concurrence process. Although the working group is not recommending further review of the rulemaking process, implementation of the recommendations focused on improving concurrence, timeliness, and resources will result in new infrastructure and data to support more sophisticated assessments, such as Lean Six Sigma reviews.

The staff recognizes that the actions discussed in this paper do not fully resolve the Commission's concern with regard to the timeliness of rulemaking. However, from both this

streamlining effort and the previous analysis of rulemaking that was undertaken in 2002, the staff concludes that the factors which appear to have the most significant impact on the timeliness of rulemaking are related to the resources applied to the development of technical bases and the implementation of the rulemaking process, and the priority given to these activities. The staff plans to examine alternative approaches for achieving improvements in rulemaking timeliness.¹ While the staff may begin to explore some of these approaches immediately, it may not be possible for the staff to pursue these approaches until FY2010, when adjustments could be made to make available additional resources.

The majority of the working group recommendations can be implemented by the staff without Commission approval. However, the staff is requesting Commission approval to implement the four recommendations which it can not apply unilaterally. These are briefly discussed below and in more detail in the report.

For the Office of FSME, the working group is recommending that the Commission extend two delegations of authority to the Director. The Commission has delegated to the Director of NRR the authority to waive development and submission of rulemaking plans and the authority 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. FSME currently obtains Commission approval on a case-by-case basis to eliminate rulemaking plans and to share draft information with public stakeholders. These authorities would provide additional flexibility and efficiencies to FSME rulemaking activities. For the Office of NRR, the working group is also recommending that the Committee to Review Generic Requirements (CRGR) be removed from the review of current and future rulemaking packages and that the Advisory Committee for Reactor Safeguards (ACRS) be removed from the review of proposed rule packages (unless the staff determines that a briefing of the ACRS is more efficient for situations involving complex technical issues).

COMMITMENTS:

In this paper the staff commits to undertake the following actions:

1. Continue to implement the program level RPIP process improvements and other improvements as identified in the working group report within the budgeted resources.
2. Prioritize, plan, and manage those recommendations that are interoffice or require re-allocation of resources under the planning, budgeting and performance management process.

¹These approaches may involve training of staff on the development of technical bases; consideration of the expansion of existing practices like the use of steering groups consisting of senior executives, to reduce concurrence times; exploring the broader use of innovative rulemaking techniques, like the process used to add amended Certificates of Compliance to 10 CFR Part 72 Subpart K; more use of processes like direct final rules, when appropriate, and possible pilot projects.

3. Revise Management Directive 6.3, the Rulemaking Process, to reflect delegations of authority and any other policy related recommendations approved by the Commission.
4. Examine alternative approaches for achieving improvements in rulemaking timeliness which include different applications of resources and a more focused prioritization of these resources during critical time periods.

RECOMMENDATIONS:

The staff recommends that the Commission:

1. Delegate the authority to waive the development and submission of rulemaking plans to the Director of FSME to be consistent with the authority already delegated to the Director of NRR.
2. Approve the staff's recommendation for the removal of the CRGR from the review of current and future rulemaking packages.
3. Approve the staff's proposal to provide proposed rule packages to the ACRS for comment, and that ACRS be briefed on proposed rules only as a result of an ACRS request.
4. Delegate the authority 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 to the Director of FSME to be consistent with the authority already delegated to the Director of NRR.

RESOURCES:

Resources to continue rulemaking streamlining efforts will cost approximately 1 to 1.5 FTE per fiscal year. The staff will re-allocate FY 08 and FY 09 resources as necessary through the planning, budgeting and performance management process.

The Commissioners

-5-

COORDINATION:

The Office of General Counsel has no legal objection to this package. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objection to its content.

/RA William F. Kane Acting For/

Luis A. Reyes
Executive Director
for Operations

Enclosure:
Assessment of Rulemaking Process
Improvements

The Commissioners

-5-

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Executive Director
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* Concurred via email

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OFFICE	NRR:DPR:PFPB	NRR:DPR:BC	TECH EDITOR*	NRR:DPR:D	ADM*
NAME	HTovmassian	RCarlson	CBlady	MCase	MLesar (CBladey for)
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DATE	07/18/07	07/18/07	07/19/07	07/18/07	07/31/07
OFFICE	NRO:D	NSIR:D	NMSS:D	RES:D	NRR:D
NAME	RWBorchardt (DMatthews for)	RZimmerman (WDean for)	MWeber	BSheron (MJohnson for)	JDyer (JWiggins for)
DATE	07/27/07	07/26/07	07/24/07	07/25/07	08/01/07
OFFICE	EDO				
NAME	WKane for LReyes				
DATE	08/10/07				

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