

April 22, 2011

MEMORANDUM TO: R. W. Borchardt
Executive Director for Operations

THRU: Sharon D. Stewart-Clark, Acting Director */RA/*
Office of Administration

FROM: Cindy Bladey, Chair */RA/*
Rulemaking Coordinating Committee

SUBJECT: REVISION TO THE COMMON PRIORITIZATION OF RULEMAKING
PROCESS

Purpose:

To inform the Office of the Executive Director for Operations (OEDO) of the staff's revised methodology for the common prioritization of rulemaking (CPR) and recommend an opportunity for early OEDO participation in the CPR process to ensure alignment and consistency with agency priorities.

Background:

Three primary program offices are process owners for managing the U.S. Nuclear Regulatory Commission (NRC) rulemakings: the Offices of Nuclear Reactor Regulation (NRR), New Reactors (NRO), and Federal and State Materials and Environmental Management Programs (FSME). These offices coordinate with each other and the support offices via a subcommittee of the Rulemaking Coordinating Committee to produce an annual rule prioritization report through the CPR process. The current report projects rulemaking activities and associated resources for fiscal years (FY) 2011–2012. The CPR process for FY 2012–2013 began in December 2010 and ended with the submission of the budget request to the Office of the Chief Financial Officer (OCFO) in April 2011.

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The method used to produce the annual rule prioritization report was developed in 2005 and is described in a memorandum dated August 29, 2005, "Common Prioritization Methodology for Nuclear Regulatory Commission Program Offices" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML052370186).

The methodology was based on the five NRC strategic goals in effect at that time: safety, security, effectiveness, management excellence, and openness. The methodology requires the selection of a primary and a secondary strategic goal that the rulemaking is intended to support and the selection of the rulemaking activity's level of contribution—high, medium, or low—to accomplishing those goals. A table of strategic goal versus contribution is used to assign a numerical score based on the selection.

The original methodology used three tables, one each for reactors, materials, and waste. The total score for the rulemaking activity was determined by doubling the table value for the primary goal and then adding the table value for the secondary goal. All NRC rulemakings are ranked sequentially based on the total score that determines their priority. The NRC uses a range of total scores to determine if an individual rulemaking is considered to be high, medium, or low priority. The staff puts all of the NRC's ongoing and planned rulemakings into a common database, including the expected schedule milestones, estimated full-time equivalent (FTE) costs, and contract funds that are required to complete the rulemaking. The database breaks out the FTE and contract fund estimates by fiscal year to enable the staff to plan for the upcoming budget cycle and, as appropriate, justify differences between planned and actual resources required for the current or adjacent budget cycle. The database is considered to be a "common" prioritization of rulemaking because it contains planned rulemakings from all lead offices (NRR, NRO, and FSME) and others as appropriate (e.g., offices of Information Services, Administration, the General Counsel), and because the FTE and contract fund estimates reflect the resources for all staff and Commission offices expected to be involved in each rulemaking. The staff may also use the prioritization score throughout the year to inform office decisions on rulemaking projects when a higher priority rulemaking cannot be undertaken because of resource constraints, changes in Commission direction, emergent work, or unanticipated stakeholder input.

Going forward, the CPR process will begin earlier to better align with the budget process. An office director alignment meeting will be held in January, and the rulemaking activities and associated resources will be used in developing the program considerations and priorities. The FY 2011-2012 CPR report shows the budget estimates for 2 fiscal years beyond the current fiscal year. Beginning with the FY 2012–2013 CPR report, the staff will populate the database with rulemaking activities beyond the 2-year horizon as the staff becomes aware of them. However, budget estimates will not be provided for these long-range projections. Although the staff believes that planning for rulemakings beyond 3 years is speculative, the staff will attempt to provide such projections when information is available to assist in long-range planning. Because of their speculative nature, the long-range projections should not be used for budget planning or other decision making. The staff will revise and refine these long-range projections each year as available information changes.

Discussion:

Revised CPR Methodology

The NRC staff is currently updating the methodology used to determine the numerical score that results in a rulemaking being classified as a high, medium, or low priority. The staff's draft revision to the CPR prioritization scoring is described in the enclosure.

The staff revised the scoring methodology to: (1) consider the updated NRC "Strategic Plan: Fiscal Years 2008–2013" (NUREG-1614, Volume 4, issued February 2008), which changed the number of NRC strategic goals from five to two; and (2) add factors for internal and external influences, factors previously not included in the scoring. The internal (i.e., Governmental) influences include Commission direction, congressional mandate, and other direct or indirect influences on the staff from the Commission or other Governmental organizations. External (i.e., public) influences include significant industry, nongovernmental organization, or other stakeholder interest. All offices will use the same general guidance and criteria when determining the appropriate factors to be used for each rulemaking in the CPR process.

The staff notes that, although the Rulemaking Coordinating Committee ensures coordination between the program and support offices, the CPR subcommittee discussions tend to focus on establishing an accurate projection of planned rulemakings and their associated resources. The relative priorities of the individual rulemakings are generally not discussed at the subcommittee level. Because the rulemakings from different program offices impact different sets of licensees, each program office develops priorities for its own rulemakings by independently assessing and selecting the goals that each rulemaking supports. Under the original CPR prioritization scoring methodology, priority scores are calculated differently, depending on whether the rule supports the reactor safety program or the materials program. The revised CPR methodology described in the enclosure eliminates those differences and applies a consistent scoring method to all rulemakings across all program areas. Final priorities will be ranked within business lines.

The staff has implemented the new methodology during the FY 2013 budget formulation and will make any necessary adjustments to the process during FY 2014 based on lessons learned. All rulemaking actions have transitioned from the original methodology to the new methodology and have been prioritized accordingly.

Coordination of the CPR

The CPR process is currently used as a budgeting tool to inform NRC program and support office budget requests for rulemaking. However, OEDO recently asked that the CPR process become more transparent and specifically asked the staff to include an early opportunity for OEDO oversight of CPR activities in the period before the CPR report is sent forward with the budget request to OCFO. Accordingly, the staff is recommending two changes to the CPR process (1) to give OEDO the opportunity to oversee the CPR early in the process; and

(2) ensure alignment with the office directors. These changes will ensure that the CPR process accurately reflects the agency's priorities, enables programmatic decisions across business lines, and informs the staff's budget development activities. OEDO involvement in the staff's near-term rulemaking plans at this juncture will allow, as appropriate, adjustment of relative priorities before budget decisions are made that have the potential to reduce funding for rulemakings that OEDO considers important to the NRC's mission. The CPR committee will engage office directors, or their designates, to review and discuss rule prioritization before offices develop their budget.

One aspect of programming to consider when providing this high-level review is that the technical staff working on the rulemakings developed in different program offices tend to have skill sets specialized to their own program area. For example, the working group for a materials program rulemaking may consist of experts in fuel cycle activities, while the working group for a reactor program rulemaking may consist of experts in power reactor loss-of-coolant-accident analyses. If the NRC were to reassign resources (particularly technical staff) to support a higher priority rulemaking in a different program area, those resources may or may not have the technical or program expertise to be effective. The CPR process is a planning tool that is not designed or ideally suited for reprogramming FTE and contract dollars across business lines, because the technical expertise necessary for writing rulemaking packages (including the Statement of Consideration) is not necessarily directly transferrable across business lines. Any transfer of FTE and contract dollars are best enacted during budget execution, when staff support across program lines can be assessed on a case-by-case basis by the relevant program offices.

Under the current CPR process, each year the staff spends several months, beginning in December, establishing an accurate projection of all anticipated rulemakings, their associated milestone schedules, and necessary funding before it provides the CPR report to the Chief Financial Officer in June. In the revised CPR process, the staff proposes to produce an early draft of the CPR report in the December/January timeframe to obtain any early OEDO and office director feedback. Additionally, the staff will include an OEDO representative on the list of attendees for the CPR meetings, typically held every 2-4 weeks during the process. When staff review of the draft CPR report is completed, the staff will brief office directors to gain alignment, and subsequently brief OEDO. The staff suggests that OEDO oversight focus on whether: (1) the CPR report contains any rulemakings that staff should not undertake; (2) there are any rulemakings missing from the CPR report; (3) the relative priorities of the rulemakings are appropriate; (4) the four factors contributing to the prioritization score are appropriate; (5) the dates in the rulemaking schedule support the agency's mission; and (6) there are any resource (FTE or contract dollar) concerns.

The Office of Administration anticipates using the results of the final CPR report to inform the NRC's annual Regulatory Plan signed by the Chairman and sent to the Office of Management and Budget each June 1. The Regulatory Plan is required by Executive Order 12866, "Regulatory Planning and Review," issued September 30, 1993. It is published as part of the fall edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions and includes a statement of the agency's regulatory priorities. The Regulatory Plan provides the public with

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information about the most significant regulatory actions that the agency expects to take in the coming year and beyond. To ensure timely submission of the Regulatory Plan and the budget request to OCFO, the staff respectfully requests that OEDO review the CPR report and notify the staff of any necessary changes within 2 weeks of the date of the request. The staff will assume OEDO's consent to the CPR report if OEDO has not provided comments by the end of the review period.

If OEDO provides comments, the staff will resolve those comments before it submits its budget request to OCFO.

Conclusion:

The staff recommends a process change that will provide OEDO with an early opportunity to oversee all planned agency rulemaking activities, as ranked within business lines, as part of the rulemaking budget development process. This will help ensure that the staff develops a budget that is aligned with agency priorities. The staff believes that the combination of the revised prioritization scoring methodology and the revised process to include increased OEDO oversight will improve the CPR process.

Enclosure:

Draft Revised Methodology and Rationale for
Common Prioritization of Rulemaking

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