

# UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BRIEFING ON REVIEW OF RULEMAKING PROCESS

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PUBLIC MEETING

Nuclear Regulatory Commission  
One White Flint North  
Rockville, Maryland

Thursday, June 9, 1994

The Commission met in open session,  
pursuant to notice, at 10:00 a.m., Ivan Selin,  
Chairman, presiding.

COMMISSIONERS PRESENT:

IVAN SELIN, Chairman of the Commission  
KENNETH C. ROGERS, Commissioner  
FORREST J. REMICK, Commissioner  
E. GAIL de PLANQUE, Commissioner

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STAFF SEATED AT THE COMMISSION TABLE:

WILLIAM C. PARLER, General Counsel

JOHN HOYLE, Acting Secretary

JAMES TAYLOR, Executive Director for Operations

GERALD CRANFORD, Director, Office of Information  
Resources Management

DR. BILL MORRIS, Director, Division of Regulatory  
Applications, RES

CLEMENS J. HELTEMES, Deputy Director, Generic Issues  
and Rulemaking, RES

WILLIAM OLMSTEAD, Associate General Counsel

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P-R-O-C-E-E-D-I-N-G-S

10:00 a.m.

CHAIRMAN SELIN: Good morning, ladies and gentlemen.

The Commission is meeting this morning to receive a briefing on proposed changes to the rulemaking process. One NRC function that has, in fact, favorably impressed me since I arrived here is the rulemaking function. In fact, there are statistics to support this view. The Agency has been issuing 45 to 50 final proposed rules a year for the past several years and only a handful of these have taken longer than the two year time frame set by the EDO for completion of the rulemaking process. Not only have we been timely, but I think we've actually been innovative in seeking to facilitate participation by the public in our rulemaking process. I think this is a good record and I do believe that rulemaking at the NRC has been working relatively smoothly.

Now, having said all that, it makes little sense for us to just wait until we run into real problems. Rather, one of the keys to good management, I think it's true here as well as everywhere else, is to look at the programs before significant problems arise rather than afterwards. Just because we're

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1 doing pretty well doesn't mean that we can't do  
2 better.

3 The National Performance Review, published  
4 last year, encourages agencies to do self-evaluations  
5 in order to identify ways of doing business better and  
6 more efficiently. The NPR report specifically  
7 recommended that agencies focus on the rulemaking  
8 process and to examine ways to improve that process  
9 For us, this is especially important. We are one of  
10 the very, very few nuclear regulatory agencies in the  
11 world that both does the rulemaking and then does the  
12 licensing, inspection and enforcement against these  
13 rules. So, it's particularly incumbent on us to pay  
14 a lot of attention to the rulemaking process.

15 I'm encouraged by the fact that the staff  
16 has been thinking about this issue and analyzing how  
17 we can improve the process. We appreciate the efforts  
18 of the staff and the Office of General Counsel in this  
19 regard. In short, the process doesn't have to be  
20 broken for us to look at ways to do better. We think  
21 you've been doing a good job and we're very interested  
22 in hearing how we can do a better job on the  
23 rulemaking process.

24 Commissioners?

25 COMMISSIONER de PLANQUE: Just a point of

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1 clarification. I thought I heard you say that only  
2 half of the rules exceed the time period.

3 CHAIRMAN SELIN: No. No. Very few exceed  
4 the time period.

5 COMMISSIONER de PLANQUE: Okay.

6 CHAIRMAN SELIN: Only a handful.

7 COMMISSIONER de PLANQUE: Handful. Oh,  
8 good. Thank you.

9 CHAIRMAN SELIN: It's a big hand, but it's  
10 still just a handful.

11 COMMISSIONER de PLANQUE: I thought I  
12 heard half.

13 CHAIRMAN SELIN: But two years is a long  
14 time. So, even though we're within the piece, if we  
15 could do better, we should do better.

16 Mr. Taylor?

17 MR. TAYLOR: Good morning. I would note  
18 that the effort that you will hear this morning to  
19 improve rulemaking is a joint effort by the staff and  
20 the Office of General Counsel. So, at the table are  
21 representatives from staff and General Counsel and  
22 you'll hear from both this morning.

23 Proposals for improvement are numerous in  
24 terms of numbers and you'll hear those talked about  
25 today. But we do believe that collectively they will

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1 allow us to achieve a greater efficiency, better  
2 coordination and hopefully better results in our  
3 rulemaking work. I should note it's coupled with  
4 other initiatives. For example, the Commission is  
5 aware we're proceeding with our marginal safety  
6 program to revise NRC regulations that impose large  
7 economic burdens not commensurate with the safety  
8 importance and we're working on that. We will soon be  
9 forwarding the recommended final regulatory analysis  
10 guidelines that will help assure that our rules are  
11 first needed and cost effective consistent with our  
12 safety goals and in conformance with the backfit rule.

13 Additionally, the staff is continuing, in  
14 accordance with Commission guidance, to emphasize that  
15 our regulations be risk-based to the maximum extent  
16 practical and also performance based.

17 With those opening over thoughts, we'll  
18 get into the details of the briefing, which is in two  
19 parts. First, Bill Olmstead you know. Gerald  
20 Cranford is here from IRM and from the Office of  
21 Research, Jack Heltemes and Billy Morris.

22 We will begin the presentation with Bill  
23 Olmstead from the Office of the General Counsel.

24 MR. OLMSTEAD: Mr. Chairman, members of  
25 the Commission, John Wesley was a theologian at Oxford

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1 University in the 18th Century who was famous for  
2 starting societies that came up with lots of rules and  
3 the Debating Society at Oxford ridiculed him by  
4 saying, "By rules they eat, by rules they drink,  
5 everything by rule but think."

6 CHAIRMAN SELIN: We know where you stand  
7 on that.

8 MR. OLMSTEAD: So, I hope today that we'll  
9 do some thinking about the rulemaking process that's  
10 more productive and moves us along.

11 If we could start with the briefing  
12 slides, what I hope to do today is give you a little  
13 bit of background of where the federal government is  
14 at large. I accused Bill Parler of assigning me this  
15 to get revenge for having spent two years on the  
16 rulemaking committee at the Administrative Conference  
17 debating recommendations for improvement, which you  
18 note from the paper are the basis of a lot of the  
19 empirical work that we did in the Office of General  
20 Counsel looking at the NRC's rulemaking process.

21 But we live in an environment that started  
22 in 1946 with the Administrative Procedure Act saying  
23 that the way agencies should promulgate rules is to  
24 identify the list of issues that they want to comment  
25 on, get public comment and adopt the rule. Over the

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1 years, the courts got into the act and by the time I  
2 came first to the Nuclear Regulatory Commission we had  
3 adjudicatory rulemaking whereby it, for the famous  
4 ECCS rulemaking we had a two year cross examination  
5 before we could even get to a rule. This agency took  
6 the lead as an upstart regulatory agency in the  
7 federal government and the lead case in rulemaking is  
8 the Vermont Yankee case and is taught in all the law  
9 schools today, in which the Supreme Court said all  
10 that agencies have to do is follow the Administrative  
11 Procedure Act.

12 Well, that's not really true. There are  
13 18 different statutes that also apply to rulemaking,  
14 the most important of which to us are the Regulatory  
15 Flexibility Act and the Paperwork Reduction Act  
16 because it's through those acts that OMB gets a review  
17 of independent regulatory agencies and we now have  
18 several executive orders that have just come out that  
19 require regulatory planning so that there's OMB review  
20 under the Paperwork Reduction Act. One of the reasons  
21 for that is that a lot of criticism of federal  
22 rulemaking has come in the academic literature because  
23 agencies have overlapping mandates and if all the  
24 independent agencies from OSHA and the Department of  
25 Labor to the NRC to EPA to DOE promulgate rules

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1 without coordinating with one another, you can end up  
2 with conflicting requirements. So, a call has gone  
3 out that more coordination be done centrally through  
4 the Office of Information Regulatory Affairs at OMB  
5 and there is an effort underway to try to bring more  
6 sense to coordinating requirements among agencies,  
7 particularly in areas of overlapping jurisdiction.

8 The National Performance Review has come  
9 out and we just recently this week, as a matter of  
10 fact, got a request from the Administration to look at  
11 implementation of 70 of those recommendations. All of  
12 the recommendations in improving regulatory systems  
13 were included in that and those recommendations were  
14 also before us when we did this review. So, I think  
15 that it will be possible for us to respond to that  
16 request in this area as a result of the Commission  
17 action on this paper.

18 The final thing is that I have listed in  
19 an appendix the ACUS recommendations. The ACUS  
20 recommendations were used by the National Performance  
21 Review to develop their recommendations for the simple  
22 reason that the research director at the  
23 Administrative Conference was detailed to the National  
24 Performance Review to head the task force that came up  
25 with those recommendations. So, there's kind of an

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1 incestuous relationship between those recommendations  
2 and the conference recommendations.

3 CHAIRMAN SELIN: Just before you get into  
4 that, I've been going on the assumption that if we  
5 didn't want to change anything we wouldn't have to  
6 change anything in the way we do rules.

7 MR. OLMSTEAD: I think that's correct.

8 CHAIRMAN SELIN: There's no statute or  
9 there's no major program that's required.

10 MR. OLMSTEAD: We're in compliance with  
11 all --

12 CHAIRMAN SELIN: We're in compliance. So,  
13 although obviously we respond to sort of both general  
14 trends and also information that's turned up, that  
15 this is basically an internally generated effort to do  
16 better.

17 MR. OLMSTEAD: Yes.

18 CHAIRMAN SELIN: Not a response to a  
19 changing external --

20 MR. OLMSTEAD: It's not a response to an  
21 external. I think we're leading the external  
22 environment in many ways because many of the  
23 recommendations that the conference came up with were  
24 things that were already being done here. So, I don't  
25 think there are any external requirements that we're

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1 not in compliance with. I know there are no external  
2 requirements that we're not in compliance with.

3 (Slide) If we go to the second slide,  
4 proposals for improvement. You have, since November  
5 and December, received proposals for improvement in  
6 the Regulatory Review Group's internally generated  
7 study. You got a letter from NUMARC, which of course  
8 is no more, making some recommendations for  
9 streamlining rulemaking. We've already mentioned that  
10 the conference had some seven recommendations and the  
11 National Performance Review had a number of  
12 recommendations for improved rulemaking. What we did  
13 was look at those, and that's described in the paper,  
14 and try to decide which one of those recommendations,  
15 if any, might indicate some changes we might want to  
16 make in the process. Almost everybody was emphasizing  
17 systematically setting priorities at the highest level  
18 of the agency and reviewing the existing system to  
19 determine where the problems and bottlenecks are  
20 occurring and to improve and streamline the process.  
21 Everybody recommends that. It's just good management  
22 sense and I think this paper reflects an effort to do  
23 that.

24 There were some other things that we will  
25 go along with and talk about, but first I want to talk

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1 about our existing environment. In this regard, I've  
2 asked them to switch slides 3 and 4 so that the next  
3 slide you see will be the NRC rulemaking environment  
4 because the NRC throughout its history has done a lot  
5 of work looking consistency at its rulemaking process  
6 and trying to make -- now that's the next slide, slide  
7 4. Oh, well.

8 COMMISSIONER de PLANQUE: They just had it  
9 up before.

10 MR. OLMSTEAD: Oh, they just had it?  
11 Okay. I'm sorry.

12 The regulations handbook and the CRGR  
13 backfit requirements were efforts by this agency to  
14 impose discipline on its rulemaking process. So, I  
15 called for volunteers in the Office of General  
16 Counsel, not knowing whether I would get any, and I  
17 got a very bright lawyer by the name of Hampton  
18 Neusome, who is sitting over here, who helped me do  
19 this work. I put it on the table just so you could  
20 see that we did some work. We went through all of the  
21 rulemaking since 1985 when this handbook came out to  
22 look at whether the policies that were adopted by the  
23 Commission and the EDO at that time had, in fact, been  
24 complied with. We also looked at the CRGR work to  
25 make sure that the policies that had been adopted had

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1 generally been complied with in that regard.

2 (Slide) What we found was that, if you  
3 look at the next two charts, we were -- if we could  
4 have the first chart, please. We were doing in the  
5 neighborhood of 30 to 40 rules, final rules a year  
6 during that period of time. These are just final  
7 rules. It's roughly double that if you take the  
8 proposed rules and final rules because you've got  
9 proposals in each of those years. So, if you add that  
10 up over a nine to ten year period, you've got roughly  
11 400 rules that have been subject to the last major  
12 policy adopted by the Commission.

13 If we go to the next slide, we were able  
14 to identify only seven that clearly were outside,  
15 substantially outside the guidance in that policy  
16 area. If you look at those rules, and most of you  
17 will recognize them, they don't have any, at least I  
18 couldn't discern, common threads. You might say  
19 judicial review is a common thread in that two of them  
20 involve judicial reversals. But there are not things  
21 that you can point to in the records of those  
22 rulemakings that say, "Gee, if I fixed that, none of  
23 those rules would have caused a problem." Basically  
24 the major problem was that you had a change in policy.

25 CHAIRMAN SELIN: For those of us who

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1 haven't lived with NRC all our lives, what's -- is  
2 that sequestration?

3 MR. OLMSTEAD: Sequestration rulemaking.  
4 That was one done out of the Office of General Counsel  
5 that had to with the issue of whether an interview  
6 could occur with a licensee employee outside the  
7 presence of the licensee's counsel.

8 CHAIRMAN SELIN: I see.

9 MR. OLMSTEAD: That was a dicey issue.  
10 The Administrative Conference was asked to look at  
11 that issue. It went up into the courts. There were  
12 some minor problems with it and the rule was remanded  
13 and then finalized.

14 CHAIRMAN SELIN: And why did the radiator  
15 licensing -- that's one I've never even heard about.  
16 Why did that take so long?

17 MR. OLMSTEAD: My understanding of that  
18 one, and maybe Bill wants to speak to that --

19 DOCTOR MORRIS: This was an attempt to  
20 codify in the regulations some of the licensing  
21 experience we'd had through the years on individual  
22 licenses granted for irradiators. These are the  
23 devices that irradiate food, perhaps sterilize it.  
24 So, we were attempting to do that and a large part of  
25 this delay, I believe, could be attributed to the fact

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1 that just about the time we started the rulemaking an  
2 event occurred down in Georgia. The RSI event  
3 occurred. So, in parallel with trying to do the  
4 rulemaking, we were trying to absorb the lessons  
5 learned from that event and factor those into the  
6 rulemaking. So, it was an unusual case, but that was  
7 essentially what this one was.

8 MR. OLMSTEAD: Okay. Taking that into  
9 account, that there -- and I'm agreeing essentially  
10 with your introductory statement, there really isn't  
11 a significant problem with NRC rulemaking and it's  
12 being done on time. I'll also tell you that it used  
13 to be that statistics were maintained throughout  
14 government on rulemaking and the budget for that was  
15 cut. So, that's no longer done. So, all you have are  
16 kind of war stories from other agencies. But most  
17 agencies that are concerned about the rulemaking  
18 process are involved in rulemakings that are taking  
19 six to seven years, which is three times the typical  
20 time here for major rulemakings.

21 No agency has problems with change in  
22 phone numbers. We're essentially talking about major  
23 policy kinds of rulemaking.

24 COMMISSIONER de PLANQUE: It's instructive  
25 to know that less than two percent are over the

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1 target. Did you do any calculations to the average  
2 time?

3 MR. OLMSTEAD: Well, the problem --

4 COMMISSIONER de PLANQUE: Or do you have  
5 a feel for --

6 MR. OLMSTEAD: I have a feel for the  
7 average time, but I tried to break it up into those  
8 that should take about, in my judgment, 90 days to six  
9 months and those that it should take the full time.  
10 My view is that most of the time you're below ten  
11 percent on major rules.z

12 COMMISSIONER de PLANQUE: Say that again.

13 MR. OLMSTEAD: Major rules. Major rules  
14 that involve significant input from the public and the  
15 Commission. These are like the negotiated rulemakings  
16 or the enhanced participatory rulemakings or those  
17 kinds of things.

18 COMMISSIONER de PLANQUE: What about them?

19 MR. OLMSTEAD: If you took these rules and  
20 said they were there, you'd still be below ten  
21 percent.

22 COMMISSIONER de PLANQUE: Below ten  
23 percent of what?

24 MR. OLMSTEAD: Of rules where you have  
25 time problems. I thought your question was --

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1 COMMISSIONER de PLANQUE: I'm looking for  
2 a sense of except for the ones that exceed the two  
3 years.

4 MR. OLMSTEAD: Oh, except for those.

5 COMMISSIONER de PLANQUE: What's the  
6 typical amount of time.

7 MR. OLMSTEAD: Oh, the typical amount of  
8 time is 22 months for major rules.

9 COMMISSIONER de PLANQUE: For major rules.  
10 What you're saying are about ten percent?

11 MR. OLMSTEAD: No, they're about 30  
12 percent.

13 COMMISSIONER de PLANQUE: Thirty percent.

14 MR. OLMSTEAD: Right.

15 COMMISSIONER de PLANQUE: Okay.

16 COMMISSIONER REMICK: When does the clock  
17 start?

18 MR. OLMSTEAD: Proposed rule.

19 COMMISSIONER REMICK: When -- the  
20 development of the proposed rule or the proposed rule?

21 MR. OLMSTEAD: Right. The records that we  
22 have start with the proposed rule. Now, not where you  
23 have an advanced notice of proposed rulemaking. If  
24 you look at the recommendations that are in this  
25 paper, and Bill will get to that later, you do have a

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1 change in that regard if you say the point of  
2 Commission involvement is going to be this policy  
3 memorandum instead of the proposed rule. So, you may  
4 want to look at whether you want to run the clock from  
5 that time and whether two years is appropriate.

6 COMMISSIONER ROGERS: Excuse me. The  
7 clock starts when the proposed rule is issued?

8 MR. OLMSTEAD: Right.

9 COMMISSIONER ROGERS: So, not --

10 MR. OLMSTEAD: The records that we have go  
11 from proposed rule to effective date of the final rule  
12 and not the policy development part that's in front of  
13 that.

14 COMMISSIONER ROGERS: Which could be all  
15 over the map.

16 MR. OLMSTEAD: Right. But the regulatory  
17 handbook does not address that.

18 DOCTOR MORRIS: Bill, I might -- just to  
19 clarify perhaps. We did some analysis just of the  
20 rules we've done within the Office of Research and  
21 then major technical rules that we're talking about  
22 there. We took the initiation date as essentially the  
23 date the EDO would approve the process or a date when  
24 a Commission SRM would be issued directing us to start  
25 a rulemaking activity as opposed to maybe when the

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1 proposed rule went out. Our average time for that  
2 sample of about 33 rules is about 20 months because  
3 that's consistent with the 22 months that he mentioned  
4 from his database, which I think went back to 1985 or  
5 thereabouts.

6 CHAIRMAN SELIN: That's faster.

7 COMMISSIONER de PLANQUE: It's faster  
8 because you're taking a longer time span. You're  
9 taking more activity.

10 DOCTOR MORRIS: Yes, and I think there is  
11 a problem. We're trying to determine the exact date  
12 of the initiation because sometimes the Commission SRM  
13 is -- you know, we're not quite up to speed when that  
14 decision comes down always and we haven't quite --

15 MR. OLMSTEAD: Which is why I didn't use  
16 that date, because I couldn't make it consistent from  
17 rule to rule.

18 CHAIRMAN SELIN: But as I understand it,  
19 we have two separate observations. One is over a very  
20 large sample over a very long time, the formal point,  
21 the point that the staff finished translating policy  
22 into a proposed rule to the time the rule was final is  
23 for the major rules as opposed to the procedural  
24 rules. You're talking about 22 months.

25 MR. OLMSTEAD: Right.

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1 CHAIRMAN SELIN: Now, for a smaller set,  
2 more recent, more focused, since we've gotten better  
3 at our job in the last couple years, you're talking  
4 about 20 months from the point that guidance has been  
5 given, not from the point that --

6 MR. OLMSTEAD: Yes.

7 CHAIRMAN SELIN: -- to the point we go  
8 final. So, that's a significant improvement in  
9 performance for that more recent subset of rules.

10 MR. OLMSTEAD: The caveat on that is that  
11 the guidance is given as the SRM. In most of those  
12 cases, the proposed rule is in pretty good shape by  
13 the time the Commission paper comes up.

14 COMMISSIONER de PLANQUE: Are you saying  
15 the same thing?

16 COMMISSIONER ROGERS: Well, there's a  
17 variation.

18 COMMISSIONER de PLANQUE: I don't think I  
19 hear the same thing.

20 DOCTOR MORRIS: There's a variation. In  
21 some cases the staff has done some legwork and  
22 groundwork before proposing in a Commission paper that  
23 they might agree to initiation of a rule. In other  
24 cases, the rulemaking initiation is approved by the  
25 EDO without a Commission paper. So, there's a

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1 variability and when we would start the clock ticking.  
2 Through the years, I think we've looked at it as a  
3 matter of fairly complicated to make any judgments  
4 based on analyzing these numbers. There seem to be  
5 different families are rules, those that are rather  
6 easy to do and we do them quickly, and those that are  
7 difficult to do and it takes a long time. I'm not  
8 able to discern an important pattern from this as yet.

9 CHAIRMAN SELIN: Let me draw a different  
10 conclusion. Whether it's 20 months or 22 months,  
11 whether it's an initial idea or draft, we have a  
12 process which if we couldn't do any better we would  
13 not be embarrassed by today and we think we can  
14 improve it. It's sort of what I'm hearing. The  
15 numbers aren't so large that we have to worry about  
16 the definition to worry about whether we're really in  
17 terrible shape or not. If we're very good or fairly  
18 good or what have you, the process would be acceptable  
19 if that's all we could do. But we think we can do  
20 better.

21 MR. OLMSTEAD: And I think the  
22 recommendation that is coming out of the Office of  
23 Research that's in the paper before you is attempting  
24 to address the ambiguity that we're talking about not  
25 very effectively and that is when are resources

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1 substantially committed to start a rulemaking process.  
2 If you have the Commission involved at an earlier  
3 stage, then the Commission is more involved in that  
4 determination.

5 COMMISSIONER ROGERS: I think that there  
6 is another point though that is of interest here. I  
7 quite agree with the Chairman's general observation,  
8 but I think that there is another point that one might  
9 like to know a little bit more about and that is how  
10 fast can we move when we really -- when there's a  
11 matter of urgency, because that's another measure. If  
12 our average is two years and everything takes two  
13 years whether it's important or not, that might be a  
14 little troublesome. So, I wonder if you had some data  
15 on --

16 MR. OLMSTEAD: Ninety days.

17 COMMISSIONER ROGERS: From the --

18 MR. OLMSTEAD: If you're committed to  
19 doing a rulemaking, we can do it in 90 days.

20 COMMISSIONER ROGERS: From the start of  
21 Doctor Morris' initiation point, how fast can we get  
22 a rule out and how fast have we gotten a rule out?

23 DOCTOR MORRIS: I could give you maybe one  
24 example. We haven't completed it yet, but we're  
25 pushing toward it.

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1 CHAIRMAN SELIN: You're just trying to get  
2 a little mileage out of --

3 DOCTOR MORRIS: And it's this one, the one  
4 on establishing requirements for the gaseous diffusion  
5 plants, which we started about a year ago and which we  
6 are running very hard to complete within the next few  
7 months because of the deadline. You can take that  
8 one. You start with a clean sheet of paper on what's  
9 on that and develop a whole new part. When we really  
10 do our best, we can do things in a very short period  
11 of time. Now, that isn't the record of 90 days or  
12 anything like that, but it's a substantive --

13 MR. OLMSTEAD: No. We did emergency  
14 planning following TMI in 90 days, but we dedicated  
15 ourselves to do it.

16 COMMISSIONER ROGERS: Well, I think that's  
17 an interesting number though. How fast have we been  
18 able to move when there was an urgent situation that  
19 was best covered by rulemaking? I think that's an  
20 interesting way of boxing in this --

21 MR. OLMSTEAD: Now, you get a lot of  
22 arguments about whether that was a quality job for  
23 obvious reasons.

24 COMMISSIONER de PLANQUE: Is the 90 days  
25 the actual limit if you used all the smallest delta Ts

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1 in the regulations for processing the rule?

2 MR. OLMSTEAD: Pretty much, yes. I mean  
3 you could theoretically do, say, the comment period  
4 could be cut to 20 days, but nobody is much going to  
5 let you do that.

6 CHAIRMAN SELIN: The reason I made the  
7 statement that I made is that obviously I think this  
8 is an important function and one that we ought to keep  
9 polishing. On the other hand, if it's in pretty good  
10 shape, we shouldn't be taking radical chances with it.  
11 In other words, the improvements ought to be clearly  
12 demonstrated as improvements as opposed the kind of  
13 high risk steps you might take if the basic situation  
14 were satisfied.

15 MR. OLMSTEAD: Right. We were just  
16 hypothetically what's the shortest period of time.  
17 I'm not recommending or wouldn't recommend that  
18 anybody do it that way.

19 (Slide) On ideas for the future, if we  
20 can go to the next chart after the graphs, we have a  
21 number of new innovative ideas being suggested by  
22 recommendations that are before the Commission. I  
23 gave a short description of the regulatory network or  
24 advanced regulatory information systems that's drawing  
25 a lot of attention in a number of agencies around

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1 government. Commissioner Rogers and I have been  
2 sitting on a task force that's dealing with how MOSAIC  
3 might be used together with INTERNET resources to do  
4 this. This agency has been one of three agencies in  
5 the federal government that's already experimented  
6 with electronic bulletin boards. There were meetings  
7 just this week where agencies were sharing the results  
8 of that and people are trying to define how these  
9 bulletin boards ought to work and what's the most  
10 effective process for developing a record using the  
11 bulletin board system.

12 One of the things that every agency has  
13 trouble with are what are known as withdrawals,  
14 amendments and repeals because if a rule is not  
15 causing any problems, the temptation is just to leave  
16 it in the rulebook and the rulebook gets fatter and  
17 fatter and fatter. So, a lot of proposals suggest  
18 that you deliberately set about identifying what those  
19 rules are and try to get them off the books. The  
20 agency has a very innovative way of doing that right  
21 now with these cost beneficial licensing actions which  
22 I think probably will indicate to us when there are  
23 requirements that ought to come off the books.

24 Then there's the whole issue of how  
25 distributed and virtual networks are going to be used

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1 in rulemaking. In other words, you've got the  
2 Security and Exchange Commission that has EDGAR. You  
3 have the Coast Guard that has its own electronic  
4 filing system. There is an industry task force called  
5 NERMA that's working on electronic filing with our  
6 agency and the question that comes up is shouldn't we  
7 use some standard form so that public access and  
8 government information is more easily shared in these  
9 electronic systems?

10 CHAIRMAN SELIN: Before you get off that,  
11 I have sort of a two part question to ask you. Before  
12 automating a process, one generally ought to review  
13 the process to see if, A, it does what you want it to  
14 do and, B, whether changes in the process would  
15 facilitate automation, or conversely whether  
16 automation would allow us to change the process. I  
17 don't really get the impression that these technical  
18 ideas, the reg nets and the various networks, would  
19 either require or, in fact -- on the one hand wouldn't  
20 require that we change our process a lot, nor would  
21 they be prerequisites for changing the process in ways  
22 that we would otherwise want to change the process.

23 MR. OLMSTEAD: I agree with the former.  
24 I'm not sure I agree with the latter. I think that  
25 there is a real opportunity to have a more effective

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1 process if we use the technology more efficiently.  
2 For instance, there's no reason that commissioners  
3 can't monitor electronic bulletin boards and have  
4 discussions among themselves about whether they agree  
5 or disagree with comments that are coming in.

6 CHAIRMAN SELIN: That's not exactly what  
7 I meant. Are there changes you would like to make in  
8 the process that we could only make if we go to the  
9 electronics or could they be done through --

10 MR. OLMSTEAD: Well, I think there are a  
11 lot of not changes that you would only make  
12 necessarily, but there are a lot of things you can do  
13 that you wouldn't have been able to do before as a  
14 result of the technology. So, there are some  
15 opportunities to define a process to effectively use  
16 the tools that technology gives you in a way to make  
17 better decisions.

18 CHAIRMAN SELIN: As you go through your  
19 recommendations, would you -- if there are those that  
20 depend on installing technology, would you point that  
21 out along the way?

22 MR. OLMSTEAD: Yes. I think Gerald will  
23 be able to -- we've done a lot of discussion about  
24 that in the context of electronic bulletin boards and  
25 I think we can do that.

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1 MR. TAYLOR: Bill Morris?

2 DOCTOR MORRIS: Thank you.

3 (Slide) What I would want to do now is  
4 just to step through these various improvements that  
5 we've listed. They are again on pages 9 and 10 of the  
6 handout.

7 What we've done in order to arrive at  
8 these recommendations, as Bill Olmstead pointed out,  
9 we've taken advantage of the sources of information  
10 from the National Performance Review, NUMARC's  
11 suggestion, the Office of General Counsel analysis and  
12 the Administrative Conference input and then we've  
13 factored into that our own experience through the  
14 years of conducting rulemakings within the agency's  
15 rulemaking framework and tried to take the lessons  
16 learned from where we've had successes in achieving  
17 efficiency and shortening schedules and also look at  
18 the lessons learned from where we've had difficulties,  
19 and put all that together into a sequence of  
20 procedures and steps that we believe could bring  
21 better efficiency coordination, shorter schedules to  
22 the process. So, these nine areas of improvement are  
23 what came out of that process of thinking.

24 I'm really going to concentrate in my  
25 following remarks on the major areas of change where

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1 we -- you know, if there is a significant departure  
2 from what we've been doing rather than just an  
3 extension and an enhancement of what we've been doing.

4 (Slide) The first area is planning, on  
5 page 11 of the handout. The point I want to make here  
6 principally is that what we're trying to accomplish is  
7 to assemble enough information in a preliminary form  
8 of the plan to allow for a judgment to be made at the  
9 highest levels in the agency that the course of action  
10 we contemplate is appropriate. We envision that the  
11 office directors, the General Counsel, the various  
12 advisory committees, even possibly the agreement  
13 states might be involved in formulating the rulemaking  
14 plan. In order to really do a good assessment of that  
15 plan, of that concept for a rule to make sure that we  
16 don't have any problems that we haven't identified,  
17 you do need to develop a preliminary concept of what  
18 the rule would include, what it would require of  
19 licensees in order to make judgments about whether  
20 there are legal problems, agreement state  
21 implementation problems, whether there might be  
22 problems with the backfit rule, the cost benefit  
23 issues. So, that's one component of the plan, is that  
24 preliminary concept of the rule.

25 In addition, we would want to include in

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1 that planning process all the documents that would be  
2 needed to support the development of the rule and then  
3 the implementation of the rule. There's a focus here  
4 on implementation. You have to look beyond just  
5 getting the rule written and published to how it's  
6 going to be implemented and what steps are going to  
7 have to be taken to implement it successfully. So,  
8 all of that is included in the planning that we  
9 contemplate here.

10 Then, you would have the review by the  
11 office directors and all the parties involved of what  
12 that plan entailed before the EDO would be in a  
13 position to make a judgment that we had made the case  
14 that there would be a benefit from proceeding with  
15 that rulemaking. At this point, I might mention, as  
16 you suggested, that we envision that the electronic  
17 bulletin board, which we're going to discuss later,  
18 would be a facilitating agent for communication. It  
19 wouldn't necessarily add anything, but it would allow  
20 better communication of these concepts and ideas in a  
21 better way to get early feedback on whether there are  
22 some problems with the plan that we have envisioned.

23 At this stage the ACRS and the CRGR would  
24 have had an opportunity to look at this plan and see  
25 whether they see a problem with the concept. But once

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1 the EDO approves it, at that stage it would be  
2 transmitted to the Commission. The Commission then  
3 could make a judgment as to whether they think the  
4 staff is on the right course with the rulemaking  
5 concept or whether they believe there should be some  
6 redirection and they want to redirect the idea that we  
7 have. Then that would be the mechanism for that to be  
8 accomplished at that stage. We would get the early  
9 feedback of the Commission as to whether we were on  
10 the right track. There were a couple of cases that  
11 Bill Olmstead put up on the slide, the maintenance  
12 rule, the training rule where the staff invested a  
13 considerable amount of effort and came to the  
14 Commission. We found that the Commission wanted us to  
15 go in a different direction and we came back to the  
16 drawing board to some extent.

17 So, this is a way to try to make sure that  
18 we're on the right track to the extent we can early in  
19 the process.

20 COMMISSIONER REMICK: Bill, can I assume  
21 that in obtaining the staff input to this that the  
22 regions would be included because of the many rules  
23 and things? They have some real practical aspects and  
24 knowledge.

25 DOCTOR MORRIS: That's correct and what we

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1 have usually done is we've relied on the program  
2 offices, NRR and NMSS, to be tapped into what the  
3 region's thinking is. That has generally proved  
4 successful through the years. On occasion, we will do  
5 something special to make sure the regional inspectors  
6 get involved. Part 20, we had a series of workshops  
7 to bring the regional inspectors in to make sure we  
8 were on track with Part 20. But for the most part  
9 we're able to capture that thinking by the interface  
10 with the NMSS and NRR.

11 COMMISSIONER REMICK: Just based on -- and  
12 I admit it's very limited and I don't know how  
13 widespread. But just an impression I have sometimes  
14 in going out to the region -- of course they have  
15 their day to day problems. I find that many times  
16 they're not in tune. They just aren't aware of the  
17 things that we are doing back here and considering and  
18 think very important, but ultimately affect them.  
19 Now, as I say, I don't know how widespread --

20 DOCTOR MORRIS: It may be that -- and,  
21 quite frankly, I hadn't thought of that. But this  
22 electronic bulletin board and the fact that the plan  
23 would be evolving on the bulletin board would be an  
24 opportunity for the regions to look at that and they  
25 could call that in quickly to NMSS or NRR and get

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1 their input in and factor that into the evolving  
2 planning.

3 MR. OLMSTEAD: This is the first place  
4 where you would have to enhance the capability of the  
5 computer system.

6 MR. CRANFORD: And one of the things that  
7 we are doing and hopefully will be in place before the  
8 end of this fiscal year is in upgraded communication  
9 system. Right now we don't have the band width on the  
10 lines to communicate effectively with the regions in  
11 this type of process. But once we go to the upgraded  
12 T-1 transmission lines, I think we will be able to do  
13 that.

14 CHAIRMAN SELIN: I've actually read the  
15 paper. If I step back, what I see you recommending is  
16 a process that could be sort of characterized this  
17 way. Number one is more involvement by the parties,  
18 including the Commission, before you draft the  
19 proposed rule. But you want the Commission's  
20 involvement more on a policy level than on a review.

21 On the other hand, you really want the  
22 Commission to be less involved in the proposed rule  
23 itself. In other words, that we don't go through it  
24 twice in detail to see if the policy has been carried  
25 out. So, what you're generally proposing from the

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1 Commission point of view, in addition to broader  
2 communication within the staff, within interested  
3 parties, is that you have a pretty well written policy  
4 document that would come to the Commission for  
5 approval. The Commission would approve with some  
6 guidance, but that effectively the Commission in many  
7 cases wouldn't even see the draft proposed rule before  
8 it was -- I mean the proposed rule before it was  
9 published. We would have approved the policy document  
10 and the EDO would then publish the rule on effectively  
11 the assurances that the execution is consistent with  
12 the policy, and then we wait to see the comments of  
13 the whole world before we really get involved in the  
14 detailed language of the --

15 MR. OLMSTEAD: Well, you're on the right  
16 track. The Administrative Procedure Act assumes that  
17 the agency sets the guidelines by identifying the  
18 issues and then they're receptive to comments not only  
19 from their staff but from the public at large and they  
20 interact with that and shape the rule.

21 CHAIRMAN SELIN: Okay.

22 MR. OLMSTEAD: So, it's a desire to get  
23 back to the theory of the Administrative Procedure  
24 Act.

25 CHAIRMAN SELIN: Right. So, again,

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1 paraphrasing or reading into the thing, you're  
2 effectively saying that we have procedures today where  
3 the initial Commission guidance goes everything from  
4 general policy to how you number the paragraphs. We  
5 don't really separate out the clear guidance of what  
6 we expect in a rule from the detailed review of the  
7 proposed rule, which we will then review again before  
8 it goes final. You're trying to separate out those  
9 two functions, get more guidance early before you've  
10 done a lot of work, but then have more freedom in  
11 implementing that guidance before you come for  
12 approval of a real rule as opposed to a draft or a  
13 proposed rule.

14 DOCTOR MORRIS: I would only add one  
15 thing. There is that step before the proposed rule  
16 goes out where the Commission has an opportunity to  
17 check it out.

18 CHAIRMAN SELIN: It's a negative consent  
19 step.

20 DOCTOR MORRIS: That's the negative  
21 consent mode. So, you do get that opportunity to  
22 confirm that we've done what you had expected to be  
23 done and if you didn't like it you have the  
24 opportunity to correct it at that stage too. So,  
25 there is that final check that would perhaps be

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1 important in some instances.

2 CHAIRMAN SELIN: Well, I sort of have two  
3 questions about this process. The first is Commission  
4 guidance isn't always as clear as it might be and  
5 therefore the most honorable, intelligent, flexible,  
6 subordinate, deferential staff might still have  
7 trouble coming to us and saying, "This document is  
8 consistent with Commission guidance." In other words,  
9 more often than I'd like to admit the review of the  
10 proposed rule is, in fact, a way of finding out what  
11 we really meant when we gave the guidance.

12 So, it's hard to get a process as clear as  
13 the one you're suggesting, Mr. Olmstead.

14 MR. OLMSTEAD: I don't think that I'm  
15 suggesting that clean a process. This may be where  
16 there's some -- everybody has their own idea type of  
17 thing. I see the staff's role more as the staff of a  
18 congressional committee drafting legislation and the  
19 Commission's role more as the surrogate of Congress,  
20 adding teeth to the statute. That means that they've  
21 got to constantly be engaged in a process, both from  
22 the public and from the staff, of taking these broad  
23 policy outlines and shaping them into a rule. What's  
24 important is to send a signal to the public that  
25 you're open to that and you have these technologies

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1 now available to let you do that.

2 CHAIRMAN SELIN: So, you would basically  
3 rely more on the staff to come back and say, "With all  
4 due deference, sirs and madams, there are several ways  
5 of interpreting Paragraph 2.4 in the SRM. Is this  
6 what you had in mind?" as opposed to necessarily  
7 waiting until you had a whole proposed rule.

8 MR. OLMSTEAD: Right. Well, they might do  
9 that through the electronic bulletin board as they  
10 shape the rule and people are commenting on it and I  
11 would assume you wouldn't just go off and ignore it.  
12 You would be aware that these things were going on.

13 CHAIRMAN SELIN: I was just going to say  
14 the second is the Commission does have a tendency to  
15 diddle with the language of the proposed rule.  
16 Whether we get it on a negative consent or not, what  
17 will have happened to give us the incentive not to  
18 continue to do what we've been known to do in the  
19 past, which is edit the proposed rule in detail as  
20 opposed to saying, "That's close enough. Let's get  
21 out and see what's happened?"

22 DOCTOR MORRIS: I don't think it was  
23 anything the staff was planning that could build in to  
24 suggest that that opportunity, that right or  
25 prerogative of the Commission is not always there.

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1 CHAIRMAN SELIN: Well, let me give you a  
2 suggestion. The suggestion is not only to do the  
3 policy part as you described, but to more actively get  
4 involved in sort of key paragraphs or key sections  
5 where you think there is ambiguity so that when the  
6 Commission sees this proposed rule on a negative  
7 consent it's not the first time we've seen the key  
8 part.

9 DOCTOR MORRIS: Well, remember, as Bill  
10 said and as we've pointed out in the paper, you would  
11 see the evolving rule if you chose. On the bulletin  
12 board at various stages during the process, you would  
13 see how it --

14 CHAIRMAN SELIN: But today we don't.

15 MR. OLMSTEAD: That's right. Today you  
16 don't pay any attention to it.

17 CHAIRMAN SELIN: And five months later we  
18 get a 38 page document which purports to be consistent  
19 with the SRM.

20 DOCTOR MORRIS: Today the papers exist and  
21 you could see them, but we're usually working on them  
22 and making changes from time to time to try to get our  
23 act together. What would be different here would be  
24 at various stages where we feel we've got it good  
25 enough for prime time essentially, that we would put

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1 that on the bulletin board and the Commission could  
2 see what it was looking like and then you could check  
3 at that time.

4 CHAIRMAN SELIN: I'd think you'd want to  
5 do more than that. I think you would want to  
6 proactively come to the Commission in developing these  
7 rules where you see a major piece that is open to --  
8 where the guidance was open to multiple  
9 interpretations to say, "Before we go much further, is  
10 this what you had?"

11 MR. OLMSTEAD: Well, I hate to assume  
12 things, but I should assume that any of us that work  
13 for the Commission should ensure that you get to see  
14 those things that are key decision points whenever  
15 they occur.

16 COMMISSIONER REMICK: I have a little bit  
17 of concern, but although you are proposing that before  
18 a proposed rule comes out the Commission would have a  
19 shot. I think that is extremely important because  
20 it's very difficult with all of our best intentions  
21 and following the Administrative Procedure Act, which  
22 I fully support, there's a certain amount of  
23 initiative when something goes out in the proposed  
24 rule to turn it around. So, I think the Commission  
25 should have the opportunity, as you're suggesting,

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1 whether it's on negative consent or what, to have an  
2 opportunity to interact more.

3 One thing that worries me a little bit  
4 with respect to the Commission on electronic bulletin  
5 board, remember we communicate to you with SRMs. If  
6 I see something on an electronic bulletin board, I can  
7 put that in. Maybe the other Commissioners at that  
8 particular time don't have the time, aren't  
9 interested, aren't aware and don't put it in. You get  
10 one comment from me and you think that's Commission  
11 direction. The other four Commissioners at that time  
12 might be in direct opposition. So you're off running  
13 saying, "Well, we got this from the Commission," maybe  
14 assuming that I'm representing the full Commission,  
15 but I might be way overboard in a direction that the  
16 others won't support. So, you change things,  
17 eventually come up and find that --

18 That's the one advantage of Commissioners  
19 through electronic bulletin boards giving you kind of  
20 what might be interpreted as Commission direction.

21 MR. OLMSTEAD: No. I think that is a  
22 problem, but I would point out that Commissioners in  
23 the past, and I'm told that one in particular, was  
24 very good at calling the staff up for briefings and  
25 telling the staff what it was that he wanted and the

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1 other Commissioners weren't involved in that. So, the  
2 staff always has the problem --

3 COMMISSIONER ROGERS: That can always  
4 happen.

5 COMMISSIONER REMICK: Yes, but you're  
6 opening up even for more opportunities.

7 CHAIRMAN SELIN: Well, actually,  
8 Commissioner Remick, at least E-mail leaves a record  
9 of this guidance as opposed to a briefing or the phone  
10 call. It opens the opportunity, but it does at least  
11 create some kind of a trail. I mean seriously.

12 COMMISSIONER REMICK: I've seen the staff  
13 go off on the conditions you're talking about feeling  
14 they've gotten direction from the Commission and it's  
15 not direction from the Commission.

16 COMMISSIONER ROGERS: And other  
17 Commissioners might not know exactly what was said.

18 COMMISSIONER REMICK: Yes.

19 COMMISSIONER ROGERS: I wonder if I could  
20 make a couple comments here. One, it seems to me that  
21 what we really are dealing with here and why there's  
22 so much discussion going on is that the process is not  
23 that well defined that you're talking about here. It  
24 seems to me that it's not that well defined because  
25 there are alternatives along the way that have to be

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1 allowed for as to how the process actually works.

2 I think, Mr. Olmstead, when we talked a  
3 little bit about this, I suggested that there ought to  
4 be some kind of a flow chart or something for how the  
5 new process is envisioned to work and it seems to me  
6 there are going to be parallel paths that are  
7 alternatives that get -- that are possibilities,  
8 depending upon the nature of the rulemaking, quite  
9 properly so.

10 It does seem to me that one of the reasons  
11 there's so much discussion here is because each one of  
12 us has a kind of model rulemaking in mind and how it  
13 might work that may be, in fact, different from each  
14 other. So, we're expressing some concerns.

15 I, for my own part, for example, am rather  
16 concerned about participatory rulemaking and I'm a bit  
17 concerned about your description, Doctor Morris, of  
18 how the planning process would take place because it  
19 seems to me that quite conceivably the participatory  
20 part of a participatory rulemaking approach should be  
21 in that. You may need that kind of initial input.  
22 That's why we did it in the decommissioning standards.  
23 We really didn't know where the community stood on  
24 some of the things and we wanted to not have a well  
25 conceived rule in mind as a possibility. We wanted to

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1 go to the public without that as a constraint.

2 So, I'm a bit concerned about how  
3 participatory rulemaking is going to fit into this and  
4 it does seem to me that that might be one of the early  
5 on aspects of planning, do you want to consider  
6 participatory rulemaking very early on and make a  
7 choice to go that route rather than another route  
8 where it would be more classical along the lines that  
9 you've discussed.

10 So, that's why I think we need to note  
11 that there are going to be some options early on here  
12 and that perhaps it's not a bad idea to try to think  
13 of what those alternative paths might be very early in  
14 the planning process.

15 DOCTOR MORRIS: You might not have noted,  
16 but we've developed a draft procedure that the staff  
17 would follow. We included it as an appendix to the  
18 paper. In there and as a part of the -- one of the  
19 steps in the planning, the question will be raised do  
20 we want enhanced participation for this particular  
21 issue. If there is a step --

22 COMMISSIONER ROGERS: I know it was  
23 mentioned.

24 DOCTOR MORRIS: -- where that is to be  
25 answered affirmatively, then we're going to have to

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1 step back and say, "If we do, then what are we going  
2 to do different?" I would think it would be prudent  
3 to choose the enhanced participatory kind of process  
4 very selectively because that is a major investment in  
5 resources that goes on there and it should be reserved  
6 for special cases. But when we do, this would kick in  
7 to that mode that you're talking about very early in  
8 the process. If the Commission saw that the staff had  
9 thought we could go on without the enhanced  
10 participation and decided they wanted to have enhanced  
11 participation, that would be the time which they would  
12 interject that thought. But we would also be thinking  
13 about it too and it's a key step to the process.

14 COMMISSIONER ROGERS: Well, I also think  
15 the electronic capabilities enlarge the modes of  
16 participatory rulemaking. So, we don't have to go the  
17 route that we went on the decommissioning standards  
18 with workshops and all that, which was very fine but  
19 was quite a cumbersome process. With electronic  
20 bulletin boards one could still have very early input  
21 and participation of some quite significance very  
22 early in the planning process. So, I think there are  
23 new options that the electronic modes start to open up  
24 here.

25 MR. OLMSTEAD: We discussed the flow chart

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1 idea. The problem is that these things, as you might  
2 imagine, expand very rapidly when you start talking  
3 about all the different options that are available.  
4 One of the reasons for having a steering group and  
5 having a policy statement is to define the process for  
6 the particular rule that's appropriate for that  
7 rulemaking and I think you're exactly right, that what  
8 you need to do is look at what you think is going to  
9 be the most efficient way given where the Commission  
10 is with respect to their thinking about the rule. If  
11 you see lots of alternatives and don't really know  
12 what might be best, you're going to want a different  
13 process than if you are very precise about what it is  
14 and you've got lots of experience and you have  
15 consensus among you about what you want to do.

16 CHAIRMAN SELIN: Commissioner de Planque?

17 COMMISSIONER de PLANQUE: Yes. Well, as  
18 Commissioner Rogers says, there are many alternatives  
19 here, so you may be getting different reactions from  
20 us depending on what alternatives we're following.  
21 Just two comments following on Commissioner Remick.

22 I would wonder in this process if the  
23 Commissioners are participating, what you would do  
24 with contradictory direction. Not just, let's say,  
25 one who says something and the rest of us are silent.

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1 It's not quite clear to me how that sort of thing  
2 would be handled along the process.

3 In terms of the public participation that  
4 Commissioner Rogers just mentioned, I can see huge  
5 benefits to having electronic media available. But I  
6 would also worry a little bit about disenfranchising  
7 people who may not have access. So, the principle  
8 that would be important to me is that the availability  
9 and the access that currently exists wouldn't be  
10 diminished by going to this sort of a process and it  
11 would seem to me we have to be very careful to ensure  
12 that that wouldn't happen. It may work both ways. I  
13 think in the long run it's inevitable we have to go  
14 this way, but that transition could pose some legal  
15 problems or some public relations problems.

16 MR. OLMSTEAD: Well, the current argument  
17 is that access by the people who are least likely to  
18 participate now is actually enhanced, particularly if  
19 you think about state and local governments who are  
20 reluctant to send people to Washington to meet with  
21 staff. In electronic format they can communicate back  
22 and forth with greater ease.

23 COMMISSIONER de PLANQUE: Assuming they  
24 have the proper equipment.

25 MR. OLMSTEAD: Well, they all do because

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1 of the 1993 National High Performance Computing Act.  
2 I didn't get the title quite right. But the National  
3 Science Foundation and the Department of Education  
4 have made INTERNET available to every public library  
5 and public school in the country. That's very rapidly  
6 being implemented across the country. Right now the  
7 bulletin board is being accessed through FEDWorld,  
8 which is on the INTERNET. So, I think there's more  
9 access.

10 As to the other part of your question, the  
11 greatest experimentation with this technique has  
12 actually been with state governments. The best one  
13 that I know of is in the State of Washington where a  
14 legislative committee has been using electronic  
15 bulletin boards and trying to draft legislation.  
16 They've actually set up different -- they've got  
17 message sections and they've got file upload and  
18 download sections and they have different sections  
19 where the legislators interact and the public can  
20 observe the interaction, but they can't participate.  
21 Then they've got sections where the individual members  
22 of the committee can interact and they're all quite  
23 excited about it, although there are problems and  
24 people are starting to write articles about the  
25 problems of over reacting to the heavier participants.

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1 The person who is more comfortable with the technology  
2 tends to have more say than the person who's less  
3 comfortable with the technology.

4 So, there definitely are problems and I  
5 don't think there's a simple answer to the question  
6 except that every federal experiment with electronic  
7 bulletin boards has got more comments than they had in  
8 the traditional rulemaking process. So --

9 CHAIRMAN SELIN: I sort of hijacked your  
10 presentation, Doctor Morris. Why don't we get back to  
11 that.

12 DOCTOR MORRIS: It might be -- just since  
13 we have touched this point, make one comment or two  
14 about the concept of the direction that the Commission  
15 might be giving to the staff. We had envisioned that  
16 if the general idea of working this way was acceptable  
17 to the Commission that we would need to work with the  
18 Office of the Secretary to establish the kind of  
19 protocols that we typically use for receiving  
20 direction from the staff through the EDO's Office. It  
21 wouldn't be something that I would feel comfortable  
22 about going off and marching in different directions  
23 without having some sense that we were doing it in an  
24 organized way.

25 But with regard to differing ideas that

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1 the Commissioners might have and different  
2 alternatives that they might want to inject into the  
3 rulemaking, we've covered that in a paper and I  
4 believe that what we have in mind is that yes, let's  
5 use those different views and put them forth as  
6 different options that need to be considered, get  
7 public comment on those and then bring that to the  
8 Commission, so then they turn to their decision making  
9 process with all that information available. But the  
10 different views and different alternatives could  
11 survive in the published rule and that was really what  
12 we have in mind.

13 CHAIRMAN SELIN: In fact, a few of the  
14 rules that either happened when I first got here or  
15 before I got here, like the original maintenance rule  
16 and the license renewal rule where there were major  
17 changes in what the staff perceived as the Commission  
18 guidance at the last minute, we haven't done that  
19 recently. What we've done recently, where there are  
20 changes you've published both versions or you've  
21 published a version that says, "On compatibility there  
22 are also major changes." But instead of choosing one  
23 at the last minute, you've put out a draft that has,  
24 "What do you think of this and what do you think of  
25 that?" The Commission has behaved reasonably well in

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1 allowing views to go out, not all of which are ones  
2 that all the Commissioners feel comfortable.

3 So, that might actually work, the system  
4 that you described.

5 DOCTOR MORRIS: That's exactly what we  
6 have --

7 CHAIRMAN SELIN: It's interesting because  
8 I thought when you started this work you sort of  
9 concentrated on what happened after you got a draft  
10 rule and just speeding up mechanically and you're  
11 really putting much more emphasis on how do we get to  
12 a proposed rule that we could put out involving the  
13 Commission in the policy, but leaving more flexibility  
14 in the language and getting public comment before the  
15 Commission tries to work out some of these more  
16 controversial issues instead of after.

17 DOCTOR MORRIS: That's exactly what we had  
18 in mind.

19 MR. TAYLOR: That's where a lot of time  
20 has been spent, perhaps to some degree on all sides  
21 needlessly. We'd like to do that more effectively.

22 CHAIRMAN SELIN: It's clear that the worst  
23 rules that we have are the ones where the Commission  
24 at the last minute gave guidance different from what  
25 the staff expected. I mean I don't know whether it's

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1 because the staff ignored all the signals from the  
2 Commission or what have you, but there was a sharp  
3 turn rather than looking at a range of options and  
4 putting them out for comment. I think we've done  
5 pretty well as an agency in avoiding that in the last  
6 couple of years.

7 DOCTOR MORRIS: Well, we were on the  
8 subject of planning when we went to other subjects  
9 which were entirely appropriate, but that would be  
10 pages 11, 12 and 13. I'd like to move on then and  
11 just briefly talk about the steering committee  
12 approach. It's page 14 of the handout.

13 (Slide) I think that what we have in mind  
14 here is to adopt more frequently an approach that we  
15 found to be very successful. I had the pleasurable  
16 experience of being the Chairman of the Steering Group  
17 for the Enhanced Participatory Rule on Decommissioning  
18 Criteria. You just were briefed on that on Monday.  
19 That process worked where the writing group, Don Cool  
20 and a team of people from the various offices would  
21 get together and they would prepare draft material and  
22 they would have a meeting with the steering committee  
23 members and division level management from the various  
24 offices would sit down together and we would bring out  
25 issues and we'd come to a resolution at the table on

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1 a given day and move forward. That experience had  
2 been used, that kind of concept had been used  
3 previously in Part 20 where at the end of the public  
4 comment period we had I think it was 800 separate  
5 comments to sort out and figure out how to deal with  
6 them. So, we worked through those, and there are  
7 other experiences.

8 So, what we have in mind here is to take  
9 that experience and just do it more frequently than we  
10 have in the past. We have to be guarded about  
11 convening these committees for each and every rule, so  
12 we would want to use them for urgent, complex or  
13 controversial rules where we needed to have that kind  
14 of input. But it's worked very well. We would just  
15 simply want to be doing it more often and that's the  
16 idea behind this concept.

17 COMMISSIONER REMICK: Bill, your  
18 mentioning a Part 20 makes me think why isn't that on  
19 the curve showing a very long period of time, but  
20 maybe the key is once the proposal was issued.

21 COMMISSIONER de PLANQUE: 385.

22 COMMISSIONER REMICK: Well, that was a  
23 number of years.

24 MR. OLMSTEAD: Oh, yes. It was in  
25 progress back in 1983, I think, when I first went to

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1 the Rulemaking Division. So, I deliberately took it  
2 out because it seemed to me to be a case that was  
3 not --

4 DOCTOR MORRIS: We don't think anybody is  
5 still at the Commission who was here when they started  
6 the rulemaking.

7 CHAIRMAN SELIN: But, you know, your  
8 briefing could be looked at differently and says, "We  
9 don't have a big problem from the point that we have  
10 a proposed rule to the point we go through, so let's  
11 concentrate on how we get to the proposed rule faster  
12 and better and with more guidance," which is  
13 essentially what you've been doing.

14 DOCTOR MORRIS: Yes. It's been my  
15 experience that once we get over the hurdle of getting  
16 that proposed rule out, what comes after that moves  
17 more rapidly in almost every case. So, the idea is  
18 let's get all the information we need from the public  
19 comments in our hands as quickly as we can so the real  
20 decision making process can proceed and the Commission  
21 could begin its business with all the information in  
22 its hands.

23 With regard to the --

24 MR. OLMSTEAD: I would add one emendation  
25 there. This is my theoretical hat on. But the APA

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1 implies that the public is going to participate in the  
2 development of the rule. To the extent that one  
3 thinks, "Well, once we get the proposed rule out we  
4 can just zip to the final rule," it tends to be  
5 interpreted by the public as saying, "Well, we're not  
6 having effective input." So, the emendation to your  
7 comment, with which I agree, is that we are also  
8 focusing on how to make that process more effective.

9 CHAIRMAN SELIN: Well, but what we've been  
10 doing in the last few years is putting out proposed  
11 rules with more degrees of freedom than had been done  
12 in the past. So, I think we've been very responsive  
13 to that, that rather than working out everything so  
14 we're putting out a proposed rule that we really just  
15 look at as a formality to go final, we've been putting  
16 out rules where the Commission hasn't been happy with  
17 some of the results. We said, "Well, let's put them  
18 out and see what the public thinks." Then, when we  
19 sit down among ourselves and say, "How do we really  
20 feel about compatibility?" we have the public's views  
21 rather than trying to fight all that out before the  
22 proposed rule goes out.

23 So, my comment isn't meant to say that  
24 it's a mechanical process from there in, but we've  
25 done fairly well at putting out broader proposed rules

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1 or at least broader comments on those to get the  
2 public involved. Now the question is how can we get  
3 to that point faster where we're ready to ask the  
4 public what it thinks.

5 COMMISSIONER REMICK: I agree very much  
6 with what you say, Bill. Even cases where the  
7 Commission approves and we might say preparation of a  
8 rule, we really mean preparation of a proposed rule  
9 and that does not mean that there ever will be a final  
10 rule necessarily. It's very dependent on the  
11 comments. There might never be a rule. It might be  
12 completely different than originally envisioned and so  
13 forth, but sometimes it's interpreted when the  
14 Commission gives the direction of staff to prepare a  
15 rule that we're talking about, there's absolutely  
16 going to be a final rule. That's not necessarily the  
17 case. Of course we have a number of examples where  
18 that has not been the case.

19 DOCTOR MORRIS: (Slide) With regard to  
20 the ideas for an improved concurrence process on page  
21 15 of the handout, the idea here is really just to  
22 impose some of the discipline that we've been able to  
23 exercise in a number of those rulemakings that we did  
24 well ahead of the two year schedule or very  
25 efficiently on all of our rulemakings by codifying

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1 these procedures and methodologies in a management  
2 directive. That's really what we have in mind here.  
3 We're doing this in many cases, but this would  
4 establish a procedure that people would know how to  
5 follow and know what is expected of them at every  
6 stage of the process.

7 (Slide) Moving on to the concept of the  
8 EDO publication of the rules, I believe we've talked  
9 about this already and I'm not sure that there's any  
10 other new thoughts that I had in mind here that we  
11 haven't already covered.

12 CHAIRMAN SELIN: Let me give you my view  
13 of it. I don't have any problem with the rule itself  
14 being published on a negative consent on the EDO's  
15 signature. What I really care about is the document  
16 that goes on top of the rule that says, "Here are the  
17 questions on which we want some guidance." As  
18 Commissioner Remick says, the rules, even though  
19 there's some assumption that there will be a rule and  
20 it will look sort of like the proposed rule, I think  
21 we have enough history of changing rules from proposed  
22 to final that I'm not worried about that.

23 I am very concerned that we have a process  
24 that the questions that we the Commission want  
25 guidance on are posed explicitly in the cover. Now,

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1 maybe the best way to do that is to make sure that the  
2 policy document says we want to be illuminated on  
3 these questions. But really until you sort of get  
4 into the drafting of the proposed rule, it's hard to  
5 know where the Commission needs some guidance.  
6 Sometimes when you start drafting these and different  
7 Commissioners say, "Gee, that's not what I had in  
8 mind," is when it becomes clear to us as Commissioners  
9 that the Commission hasn't really come to a conclusion  
10 on this point or that point and that's where we need  
11 the guidance.

12 So, I'm going to exaggerate this just for  
13 effect. I'm almost willing to let the rule go out  
14 almost without even looking at it. But I want to take  
15 a really good look at the part of the package that  
16 says, "Here are the questions that we want guidance on  
17 from the public or views on from the public."

18 DOCTOR MORRIS: Those questions would be  
19 highlighted in the Federal Register notice so that  
20 they would be the driving force to some extent in  
21 getting that public comment back in to make the final  
22 decision. I agree that that would be one of the major  
23 efforts we would be exerting here, is to make sure  
24 that we articulated good questions that we thought  
25 captured the span of the concerns and ideas that the

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1 Commission might want to be able to reflect on and  
2 move to when they got ready to make their final  
3 decision.

4 CHAIRMAN SELIN: Did you see the  
5 termination of those questions as something that would  
6 happen earlier in the process that you would call the  
7 Commission's attention to?

8 DOCTOR MORRIS: Quite frankly, the staff -  
9 - one of the things that can inhibit the staff's  
10 concurrence process and consensus process is that  
11 there are differing questions that the staff has on  
12 their minds. Perhaps we certainly won't reflect what  
13 the Commission is thinking, but some of those  
14 questions that we have probably also would be on the  
15 minds of the Commissioners. We would attempt to put  
16 those into the draft rule that would be evolving  
17 through the process, to move it through the staff  
18 quicker. So, you would see it on the bulletin board  
19 again. This is another case where you have an  
20 enhancement of being able to check it out. If you  
21 felt that there was something that you wanted us to  
22 include early on, the process that I have in mind  
23 developing with the Office of the Secretary would  
24 allow that input to be fed in. So, rather than even  
25 wait until looking at it at the latest stages, you

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1 could interject your thinking at any time and we would  
2 absorb it and try to articulate that perhaps in your  
3 own words, perhaps even saying, "Chairman Selin has  
4 the question of what to do about this particular  
5 issue, how to resolve this particular issue," and so  
6 on and so forth. That's been done in the past and  
7 that's what we have in mind here. So, you would have  
8 an opportunity to see it early, interject ideas into  
9 it and then we would present it to you hopefully with  
10 having accurately incorporated that thinking.

11 I would move on to the concept just  
12 briefly of the idea of the direct final rule.

13 CHAIRMAN SELIN: Why don't you leave that  
14 until you go through the others. That's a highly  
15 controversial piece that you would use only for  
16 relatively small number of rulemakings.

17 DOCTOR MORRIS: Direct final rule?

18 CHAIRMAN SELIN: Yes.

19 DOCTOR MORRIS: Absolutely.

20 CHAIRMAN SELIN: Whereas some of the other  
21 questions that you had advisory committees and stuff  
22 would apply to all the rules. So, unless you've done  
23 this already, say what you have to say that would  
24 apply to most or all the rules and then let's come  
25 back to this direct final rulemaking at the end.

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1       Okay?

2                   DOCTOR MORRIS:   Certainly.   Well, we're  
3       almost finished.

4                   CHAIRMAN SELIN:   Okay.   So, if we could  
5       get at the bulk of the rules first.

6                   DOCTOR MORRIS:   And I've already covered  
7       the idea of the electronic bulletin boards as being  
8       infusing the flow of information throughout the  
9       process, both within and outside the agency. That was  
10      really the only point that we had about that. It's an  
11      enhanced means of communicating and that's all that it  
12      amounts to and we've got to work out some of the  
13      details of how we do that.

14                  MR. OLMSTEAD:   I want to talk about the  
15      technology end of it for just a moment. What we're  
16      doing now with the existing bulletin board has very  
17      few lines into the bulletin board. So, if you're  
18      going to have a lot of give and take on the bulletin  
19      board, both internal and externally, you not only have  
20      to fix the internal part, you also have an external  
21      part which --

22                  MR. CRANFORD:   Well, the way the external  
23      part works today, through FEDWorld, which is a system  
24      that's set up by the National Technical Information  
25      Service. They've got a local number, a 703 number.

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1 We're currently in the process of getting an 800  
2 number. Once the 800 number is in place, I believe  
3 we'll be able to handle eight calls simultaneously.  
4 We've got the line, plus we have a bank of modems that  
5 would handle additional calls coming in. So, if we  
6 really got swamped with a lot of calls coming in  
7 simultaneously, then what we'd have to do would be to  
8 enhance that bank of modems to include more capability  
9 on the lines. At least from an access point, I think  
10 that's the point that Bill is raising.

11 That's not a big problem. It's something  
12 we could probably do inside of a month, I think, to  
13 acquire the additional resources and get them in place  
14 such that we could accommodate more simultaneous  
15 calls.

16 MR. OLMSTEAD: That becomes less of a  
17 problem if you're fully linked on the INTERNET because  
18 then you're using the UNIX environment to access it.

19 MR. CRANFORD: Well, that's certainly a  
20 more long-term solution, but I'm just looking at the  
21 short-term.

22 COMMISSIONER ROGERS: I think though that  
23 organizationally there's a question that I think has  
24 to be thought about and that is the role of SECY, the  
25 Secretary's Office in this. The Secretary's Office

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1 has been the coordinating communications medium for  
2 Commissioners to a large extent. We say, "SECY,  
3 please track," then all sorts of things go into play  
4 there.

5 With the bulletin boards, staying up to  
6 date on bulletin boards, if it is the responsibility  
7 of each individual, there may be a little bit of a  
8 problem in finding your way around, making sure you've  
9 touched base on all the right bulletin boards and so  
10 on and so forth to stay up to date. So, I think  
11 there's some thought has to go into what would be the  
12 role of SECY in this process, maybe an expanded role  
13 beyond what has been there before in providing some  
14 simple easy way for Commissioners to get the -- to be  
15 alert to something to look for on the bulletin board.

16 MR. OLMSTEAD: Right, and a lot of  
17 discussion is going on about that and the facilitated  
18 bulletin board looks very good in that regard where  
19 you have somebody identified who's trained in the  
20 various participant's needs and interests who kind of  
21 alerts, if you will, different people to issues that  
22 have come up that the facilitator knows that they're  
23 interested in. This model goes from very limited kind  
24 of what's called moderated discussions to a more  
25 traditional mediated type of discussion that's done

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1 electronically. It fits in nicely with a lot of the  
2 enhanced participatory rulemaking initiatives the  
3 Commission has already got.

4 DOCTOR MORRIS: Essentially the  
5 interaction with the committees, the only point was  
6 that we're just looking for more flexibility in the  
7 timing of the point when we would go in and work with  
8 the committees. But we'll meet with them any time  
9 they want.

10 MR. OLMSTEAD: On advisory committees,  
11 note that the National Conformance Review letter that  
12 came in is asking for agencies to address negotiated  
13 rulemaking. Now, that does involve a Federal Advisory  
14 Committee Act and the agency has only done one. I  
15 don't know if you want to use this as the vehicle to  
16 decide whether you want to do another one or not, but  
17 that is in that letter that came in last week.

18 CHAIRMAN SELIN: I have a couple of  
19 observations. I'd like to make sure I understand  
20 these correctly. Number one, the main effort -- in  
21 addition to using the technology and using it  
22 intelligently, the main effort that you've put in is  
23 how to get to a proposed rule that more accurately  
24 reflects Commission guidance and various  
25 participation, at least within the agency.

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1           Number two, you're making explicit an  
2 understanding that's sort of grown up in the last few  
3 years, that proposed rules are not really proposed  
4 rules, they are models that have a bunch of questions  
5 asked. I mean it's not the rule, but in effect it's  
6 an enhanced participatory process where the Commission  
7 wants feedback, so that we're not trying as hard as  
8 it's been in the past to get out a proposed rule that  
9 could conceivably just to go final.

10           In many cases you've got to say something.  
11 But it's a way of eliciting response and I think  
12 that's very important because I think the Commission,  
13 quite frankly, has behaved pretty well in the last few  
14 years in letting proposed rules go out that various  
15 Commissioners weren't very happy with but said that's  
16 good enough to get comment on. Before we try to argue  
17 among ourselves, let's see what's happened. That  
18 would make that more explicit as part of our practice.

19           The third thing which I thought was a big  
20 deal at the beginning of the meeting but now I realize  
21 isn't such a big deal is to separate out the guidance  
22 from the specific language. I mean if we really  
23 concentrate on the question in the proposed rule as  
24 opposed to the language in the proposed rule, then  
25 presumably we would automatically not be so concerned

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1 exactly how you've put this paragraph or that  
2 paragraph.

3 The fourth is you could substitute FERC  
4 for NRC in this discussion. I don't see that there's  
5 very much special to the Atomic Energy Act or our way  
6 of doing business that has really guided this  
7 discussion. Is that right? In other words, are we  
8 drawing from the community's thinking about rulemaking  
9 or are we doing something that's peculiar to NRC at  
10 this point?

11 MR. OLMSTEAD: Well, I for myself have  
12 tried very much to take the best lessons of the past  
13 two years of debate among the agencies, particularly  
14 that that's relevant to independent regulatory  
15 agencies, and crank that into the thinking here. So,  
16 I don't think there's anything unique about NRC's  
17 rulemaking process other than the fact you're an  
18 independent agency and the trend in government is to  
19 make regulatory agencies parts of departments. But  
20 that's not a big issue for us.

21 CHAIRMAN SELIN: If they want to make an  
22 executive department a directorate within NRC, that's  
23 okay.

24 MR. OLMSTEAD: Right.

25 MR. PARLER: The answer to your question,

1 Mr. Chairman, is no, there isn't anything unique or  
2 peculiar in this area to the NRC. We are looking at  
3 the experience of other agencies as well as our own  
4 experience collectively and as individuals.

5 CHAIRMAN SELIN: And then the last thing  
6 is sort of a subliminal piece. You've given us very  
7 strong assurances, or at least I've heard very strong  
8 assurances that most of this technical stuff really  
9 does work in the sense that people participate more,  
10 they don't feel cut out. The theory that if you're  
11 not computer literate you're cut out doesn't happen  
12 that way. That, in fact, there's more participation,  
13 not less, that channels get set up, that there isn't -  
14 - you know, we don't get a lot of viruses in the  
15 system, but that people have tried some of the  
16 technical ways of opening the system. I've been  
17 pretty happy with the fact that they've done this and  
18 you're not leading us down a primrose path where we  
19 think we've solved some participatory problem and all  
20 we've done is bought some communications or computers.  
21 At least I get a very warm feeling from what you're  
22 saying --

23 MR. OLMSTEAD: Good.

24 CHAIRMAN SELIN: -- which you will be held  
25 responsible for next year. And I want to make sure

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1 that that's what you intended to do because that's a  
2 major part of my comfort.

3 MR. OLMSTEAD: As long as you give me the  
4 authority, I'll make it work.

5 CHAIRMAN SELIN: But there is experience  
6 behind most of these pieces and people --

7 MR. OLMSTEAD: Yes. It will work.

8 COMMISSIONER ROGERS: Well, there is  
9 experience, but it's still an evolving situation.

10 MR. OLMSTEAD: But bulletin board systems  
11 set up properly is at the low end of the technology.  
12 We're not talking about the high end of the  
13 technology.

14 MR. CRANFORD: Yes. I think your biggest  
15 risk today is in the INTERNET link because keep in  
16 mind that's a totally amorphous, unowned thing that's  
17 been around for about 25 years and I guess only in the  
18 last five years has it really begun to get the  
19 notoriety and publicity that it presently has. But I  
20 think that's probably if you're looking for a weak  
21 link. But keep in mind also the present  
22 Administration's initiative to come up with the  
23 informal superhighway. Of course, INTERNET is the  
24 thing they're going to pave in order to come up with  
25 the superhighway. So, once that happens, I think some

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1 of the concerns that I have regarding security and  
2 other aspects I think will be eliminated or will at  
3 least be provided for.

4 MR. OLMSTEAD: But I agree, you need to  
5 keep those two things separate. I mean a bulletin  
6 board system is technology that's been around for 15  
7 years now.

8 CHAIRMAN SELIN: I want to make clear, I'm  
9 not concerned about the technology per se, I'm  
10 concerned that people who have tried to apply these  
11 technologies to problems like ours have generally been  
12 happy that they've tried to do it rather than feel  
13 they've been sold a bill of goods and that's what I'm  
14 hearing you telling me.

15 MR. OLMSTEAD: Yes. I think the people  
16 that use it are very happy with it.

17 COMMISSIONER ROGERS: I think the  
18 experience that I've heard in participating with Mr.  
19 Olmstead at meetings of other government agencies of  
20 their experience and concerns seem always to be going  
21 towards the concerns initially expressed turn out to  
22 be less of a problem than more of a problem in  
23 virtually every case. I haven't heard of a blow-up.  
24 Everything that is seen as a possible problem such as  
25 being swamped by comments and not being able to handle

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1       them hasn't really come about. So, I think that -- I  
2       don't think we should view this as a situation that  
3       doesn't have any problems or will never have any  
4       problems just because it's the human aspects of this  
5       thing that are really -- you know, they're important  
6       and they change in various ways. I think the  
7       technology is not a problem, but how the systems are  
8       used or misused, I don't think we've seen all the  
9       possibilities there yet.

10               MR. OLMSTEAD: No, the legal issues are  
11       daunting, but the legal issues are not what people are  
12       even having to address yet.

13               CHAIRMAN SELIN: What I'm trying to avoid  
14       is voice mail, technology which basically gets people  
15       angry as opposed to helping them solve the problem.

16               MR. OLMSTEAD: Right. I agree.

17               CHAIRMAN SELIN: I used to be able to get  
18       somebody when I had a complaint, not all I get is  
19       voice mail.

20               MR. OLMSTEAD: Right.

21               CHAIRMAN SELIN: I don't want to install  
22       that in an NRC process where the participants feel  
23       that they've been cut off by the technology rather  
24       than participate.

25               MR. OLMSTEAD: Right. We're taking little

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1 baby steps too because we're not cutting off the write  
2 a letter in and get it put in the bulletin board at  
3 all.

4 CHAIRMAN SELIN: Okay. Commissioner  
5 Remick?

6 COMMISSIONER REMICK: Yes. First a  
7 question. I know back the EDO in discussion about  
8 this some months ago indicated one way we might speed  
9 up the process after we receive public comments is to  
10 get some contractor help to review. I think with the  
11 bulletin board we're going to get more and more  
12 comments and my understanding in the case of  
13 decommissioning, some of those comments are really off  
14 base. You get young computer literate or computer  
15 jocks who suddenly see an opportunity to respond to  
16 something, don't know what NRC is versus DOE or  
17 something else, and so you get some comments that you  
18 didn't receive before that are far afield. It seems  
19 to me with these additional comments, do you still  
20 plan to get that contractor help where it makes sense  
21 to --

22 MR. TAYLOR: Yes, we're still planning to  
23 do that.

24 COMMISSIONER REMICK: So, it will take  
25 less time to handle those many, many additional

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1        comments.

2                    MR. OLMSTEAD: I might add we talked about  
3        how you define the record and I pointed that out  
4        earlier and that's why I did, because you want to keep  
5        those comments out of the record.

6                    COMMISSIONER REMICK: Yes. And I assume  
7        that legally can be done under the Administrative  
8        Procedures Act that you don't have to go into  
9        considerable detail on answering questions that are  
10       far afield.

11                   MR. OLMSTEAD: No. I think that can be  
12        done. The bigger question that some agencies are  
13        grappling with is whether the bulletin board is the  
14        equivalent of Farragut Square. You know, is that a  
15        First Amendment right to say what you want to on the  
16        bulletin board? That issue is a tougher one, but  
17        that's apart from what do you put in the record.

18                   COMMISSIONER REMICK: Just a comment now.  
19        I agree in general that I think the agency in general  
20        has done a good job with rulemaking. We have a  
21        spectrum of experience, but in general I think it's  
22        probably very good. But I strongly agree that I do  
23        think we have areas where we can improve. A couple  
24        that come to mind this morning is I think in general  
25        the agency in proposing rules does a very good job in

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1 giving the history of why that rule is here or the  
2 history of other proposed rules and so forth.

3 There are some exceptions. One that I  
4 thought was an exception was the original proposed  
5 rule on siting, going back a year or so ago, which did  
6 not even mention -- siting came up in the early '80s  
7 and the Commission decided to delay it and so forth.  
8 The revised proposed rule, I think, is much better  
9 along that line. But that's area that I think is  
10 extremely important in laying the history of this  
11 whole area and so forth.

12 Another one that comes to mind which  
13 hasn't been addressed in your proposal and that is  
14 this problem of greater coherence across offices  
15 within the same agency proposing rules. Some examples  
16 that come to mind in my experience, recent experience  
17 with the agency, one was the access rule and fitness  
18 for duty where we had two different offices proposing  
19 things, talking about drug testing and no recognition  
20 or coordination.

21 There was the maintenance in licensing  
22 renewal rules on SSCs, systems, structures and  
23 components, the inconsistency which still exists in  
24 definition of what is an SSC.

25 A more recent one where NMSS was proposing

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1 hazards analysis which was used back 25, 30 years ago  
2 in the reactor area and they decided to call them  
3 safety analysis and they're essentially the same  
4 thing.

5 I would like to see in the agency -- I  
6 wish we had some all knowing individual sage that sat  
7 in the EDO's office or somewhere else that saw all  
8 these documents and it was all knowing about this  
9 agency and could somehow get greater coherence. I'd  
10 like to see greater risk coherence across our various  
11 offices in what we propose. It's the same public out  
12 there we're trying to protect. I don't see anything  
13 which proposed to get this coherence. Now, maybe  
14 this -- what do you call it? Not screening committee,  
15 but --

16 MR. OLMSTEAD: Steering.

17 COMMISSIONER REMICK: Steering, excuse me,  
18 maybe if there's some consistency there. CRGR, I had  
19 hoped they'd do a little bit of that, but I still see  
20 great differences in the agency across offices where  
21 we're not doing consistent coherent things. I don't  
22 see anything in the proposal that talks about that it  
23 is an area and that's one of the reasons why  
24 personally I'm not ready yet to say, issue the  
25 proposed rule without an opportunity for the

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1 Commission to at least have an opportunity to say, no,  
2 I want to look further at that, because perhaps in  
3 little ways we do provide some of that, that necessary  
4 coherence and consistency. At least I hope we do.

5 We complicate the issue sometimes too.  
6 But that's one area I don't see addressed and in my  
7 mind I think it's still important to understand what  
8 we're about or if the public is to understand, if our  
9 licensees are to understand what we're about, that we  
10 do things in a more consistent manner. I hope through  
11 this process somehow we can do that.

12 As I say, I really wish we had one  
13 individual all knowing and can do this, but I still  
14 see inconsistencies coming up. All in all, please  
15 don't interpret that as being negative. It's meant to  
16 be constructive and for the betterment for the future.  
17 I think all in all what you've proposed is good  
18 inasmuch as I think we can do better than we're doing,  
19 although I agree I think the agency is doing a  
20 generally good job.

21 CHAIRMAN SELIN: But isn't there a  
22 consistency analysis supposed to be done on new rules?  
23 When a rule comes out, isn't there an analysis done by  
24 General Counsel or the rulemaking group about whether  
25 this rule is consistent with previous rules?

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1 MR. PARLER: We don't do any consistency  
2 analysis like Commissioner Remick is talking about.  
3 We're criticized enough for delaying a concurrence  
4 process. Most of this concurrence process language in  
5 this paper probably had the General Counsel's Office  
6 in mind. They were too nice to say that, but the  
7 answer to your question is no. We used to do that  
8 many years ago and we were put holes on paper until we  
9 were satisfied. This is many years ago. Until we  
10 were satisfied that they were consistent, either the  
11 background was in the paper or what the precise  
12 objective was, the bottom line clearly emerged and the  
13 thing was written so that the analysis flowed and you  
14 could understand it. You didn't have to depend on  
15 votes from the top float or ask all sorts of  
16 questions, which personally I find from my standpoint  
17 to be rather embarrassing, having failed the  
18 Commission.

19 But the answer to your question is no, we  
20 don't do that.

21 CHAIRMAN SELIN: The Rulemaking Office  
22 doesn't do that either?

23 MR. OLMSTEAD: No.

24 CHAIRMAN SELIN: I see. That's  
25 interesting. I learned something today I didn't know.

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1 DOCTOR MORRIS: I guess I would have to  
2 say we are sensitive, you know, the issue of the  
3 hazards analysis versus the safety analysis. Those  
4 things are in some cases looked at, but one of the  
5 things that we think about when we look at that is  
6 that there are different families or different  
7 constituencies of licensees there that have different  
8 backgrounds. And materials licensees involve some  
9 very small entities that don't have sophisticated  
10 capabilities and they have a spectrum up to and  
11 including some of the fuel cycle facilities.

12 So, some of these variations that we're  
13 sensitive to, we're not sure that we're able to always  
14 conform everything that's done in the material side to  
15 the way it's done in the reactor side. So, even  
16 though it might seem that we're not thinking about it,  
17 we sometimes are but are not able to make that  
18 conformance that it might be desirable, just because  
19 of the nature of the licensees.

20 COMMISSIONER REMICK: Well, I agree, Bill,  
21 there are probably exceptions, but on that particular  
22 one I don't devote too much time on it in asking at  
23 this table the question, "What do you mean by hazards  
24 analysis?" It turns out it was the same as safety  
25 analysis. I think we are then confusing people when

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1 we use different terminologies if we're talking about  
2 the same thing. Particularly, you must remember there  
3 are people in both arenas, materials and reactor area.  
4 There are lots of them and they seek two different  
5 things and they say, well, they mean something  
6 different here or what. So, I realize there have to  
7 be exceptions, but --

8 MR. TAYLOR: The lead offices sponsor a  
9 rule are principally charged with being sure of the  
10 concepts of inconsistency with what they've had before  
11 are matched. Do you agree with that?

12 DOCTOR MORRIS: Yes.

13 COMMISSIONER REMICK: But it's across  
14 offices.

15 MR. TAYLOR: I understand and it does show  
16 up occasionally in inconsistencies. But the office  
17 principally sponsoring the rule usually is the one  
18 that gives us the deepest advice on the coherency  
19 arguments and consistency. That's the  
20 responsibility --

21 COMMISSIONER ROGERS: Well, I think one of  
22 the examples that Commissioner Remick cited, the two  
23 rules that came were developed more or less  
24 simultaneously, came out more or less about the same  
25 time, the maintenance rule and the license renewal

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1 rule. I think our general perception after the fact  
2 was that they really weren't very well coordinated at  
3 all, that the folks who develop one rule weren't  
4 really talking with the folks that developed the other  
5 rule.

6 I wonder whether it might not be helpful  
7 to look at the processes that were followed in each of  
8 those in the light of your new suggested procedures  
9 and see whether the same thing could in fact happen.  
10 It wasn't a disaster, but it's caused a lot of backing  
11 and filling on both of those rules that probably could  
12 have been avoided if they had somehow been a little  
13 bit more tightly coordinated and I wonder if that  
14 wouldn't be a good example of a place to kind of test  
15 your new process to see whether it would have somehow  
16 or other improved the final result on those two.

17 DOCTOR MORRIS: Perhaps we could make a  
18 commitment in that planing stage where we look at the  
19 office directors to make a judgement about whether  
20 we're on the right course. Perhaps that could be done  
21 with something that would involve a great deal more  
22 interaction maybe. It wouldn't be a unilateral  
23 decision, but maybe there would have to be a meeting  
24 and we could look at that as a mechanism to achieve  
25 the kind of interoffice consistency that you're

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1 looking for in the planning stage.

2 CHAIRMAN SELIN: That's interesting, but,  
3 you know, in this particular example there were  
4 problems at two different levels. One is just  
5 definitions of SSCs, but the real problem was the  
6 maintenance rule. I mean, the license renewal rule  
7 was written as if there was never going to be a  
8 maintenance rule. It didn't take into account  
9 substantively that the status quo ante was changing  
10 considerably and I don't think you're going to come up  
11 with a procedure that fixes that. I mean, that's why  
12 you've got office directors.

13 COMMISSIONER REMICK: And we have to admit  
14 sometimes the Commission muddles things up for you  
15 too.

16 MR. TAYLOR: No, no. The Chairman  
17 captured the --

18 COMMISSIONER ROGERS: Well, there's one  
19 other point I'd just like to make before leaving. The  
20 other one is my favorite topic in some ways, and that  
21 is the difference in language in the rule and the  
22 statement of considerations that has come up several  
23 times in the past to bite us, I know, and somehow  
24 there's something wrong with a process that allows  
25 that to happen, in my view, that when one reads the

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1 statement of considerations and what's in there is not  
2 necessarily congruent at all. The words are a little  
3 bit different sometimes for the same thing from what's  
4 actually in the rule and what's in the Federal  
5 Register notice, and that's come back to bite us. I  
6 know I've seen it since I've been on the Commission  
7 once or twice, so, again, it's part of the process  
8 here that somehow, if you're looking at it, how to  
9 improve rulemaking, it seems to me that that's  
10 something to pay a little attention to. It shouldn't  
11 happen. That's right. We all agree. It shouldn't  
12 happen and yet it has happened.

13 MR. PARLER: There is a potential there,  
14 Commissioner, for that situation, which shouldn't  
15 happen, getting worse if there is a 20 day review  
16 schedule concurrent, not sequential, that is imposed.  
17 Because, sometimes changes are made and certain folks  
18 that are supposed to be keeping their eye on the  
19 entire picture are not aware of the changes. Indeed,  
20 they are made at various levels sometimes. That is a  
21 problem which we, certainly in the legal office, will  
22 have to continue to try to be vigilant about as long  
23 as we have the opportunity to review the thing and to  
24 speak before final action is taken.

25 CHAIRMAN SELIN: Commissioner de Planque?

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1 COMMISSIONER de PLANQUE: Well, I would  
2 agree that Commissioner Remick has hit on a topic that  
3 has been near and dear to my heart because I've seen  
4 a lot of these inconsistencies and feel a little  
5 frustrated, but I think perhaps this approach provides  
6 a key opportunity to better address these  
7 inconsistencies at the simple level of definitions  
8 which ought to be able to be handled electronically to  
9 flag problems, to the more sophisticated  
10 inconsistencies, just, say, differences in standards  
11 for dose limits for different types of licensees in  
12 different circumstances which needs a much more  
13 sophisticated look. But somehow I would hope that  
14 this whole process could address exactly those kinds  
15 of inconsistencies that are at least annoying and  
16 sometimes have gotten us into significant trouble and  
17 delays in processing rules because of that.

18 Just one little comment. It may have been  
19 inadvertent but conspicuous by its absence was ACMUI  
20 in the list of advisory committees that you were going  
21 to consult. Was that just an oversight?

22 DOCTOR MORRIS: It was an oversight  
23 because we had intended to have it in there. I  
24 thought it was there.

25 COMMISSIONER de PLANQUE: As long as it

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1 was an oversight.

2 MR. TAYLOR: It's actually in the paper.

3 COMMISSIONER de PLANQUE: I looked at the  
4 paper and I didn't see it consistent with some of the  
5 others. As long as it's an oversight, that's fine.

6 There was one more part of the discussion  
7 today that I'm a little concerned about. We've talked  
8 about going out with proposed rules with some options  
9 in them and it seems to me maybe we're ignoring the  
10 purpose of an ANPR in this process. I would hate to  
11 see our proposed rules move too far in the direction  
12 of being a total menu, pick from column A, B, and C,  
13 because then I think it's very difficult to go from  
14 that level to a final rule.

15 I think a proposed rule that looks as much  
16 like a final rule as you have in mind serves a  
17 purpose, because those out there who are going to  
18 comment on something and hope that it's close to that  
19 final rule I think need that opportunity. So I don't  
20 think we should forget other parts of the process that  
21 are available to us if we're really out there with a  
22 million different options and we want public input  
23 before we refine it.

24 MR. OLMSTEAD: I agree with that, but I  
25 would just comment you've just hit on one of the

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1 things that the legal scholars at the Administrative  
2 Conference go into absolute apoplexy about, and that's  
3 the advanced notice of proposed rulemaking which is an  
4 artificial device that was created by agencies outside  
5 of the Administrative Procedure Act. The  
6 Administrative Procedure Act doesn't recognize it at  
7 all. It only recognizes --

8 COMMISSIONER de PLANQUE: Well, maybe  
9 that's the case, but I think there needs to be two  
10 things that come before the final rule if it's  
11 something that's very controversial and we really have  
12 no idea what we want to do.

13 MR. OLMSTEAD: Right.

14 COMMISSIONER de PLANQUE: But I do think  
15 there needs to be a stage close to that final rule  
16 where everybody really gets a shot. There can be  
17 problems.

18 MR. OLMSTEAD: You should always be  
19 flexible enough to go out twice if you need to, but if  
20 you don't get any comments you don't want to cut off  
21 the ability to go final if you want to.

22 CHAIRMAN SELIN: There's a very  
23 important -- actually, there are two very important  
24 points here.

25 The first is, and again I think we've done

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1 a pretty good job, when the revisions of the proposed  
2 rule have been major we've gone back out for comment  
3 again. We've been pretty careful to say are these so  
4 large that the people would say, "Gee, if I had known  
5 that's what you were going to do I would want to  
6 comment."

7 The second, and this is really a legal  
8 question I'd like to ask the General Counsel --

9 MR. PARLER: So was the first one.

10 CHAIRMAN SELIN: I didn't say it wasn't,  
11 I just didn't want to ask you about it.

12 But more importantly, if we make a change  
13 between the proposed rule and the final rule that's  
14 pretty major, that wasn't pre-figured or pre-indicated  
15 in the kind of questions we ask, does that leave us  
16 liable to have to go back and ask people?

17 In other words, we put out a proposed  
18 rule. The proposed rule in fact doesn't have options  
19 in it. It is a proposed rule, and then we ask  
20 questions and say, "Is that the right way that we  
21 should write paragraph 2.4 or should we do it  
22 differently?" If we indicate in the questions that  
23 we're thinking of doing it two different ways, does  
24 that give us more flexibility in the final rules the  
25 way we have to go back out for comment again?

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1 MR. PARLER: It gives you more  
2 flexibility. The test really is what you would plan  
3 to do in the final is in the ball park, that people  
4 have been adequately put on notice it might happen.

5 I certainly agree with the point that,  
6 unless we are just going to go out and ask questions  
7 like the advance notice and we're going to go out with  
8 something that we call a proposed rule, we should make  
9 the best effort that we can to come up with language  
10 that although it might not be adopted as a final rule  
11 it's the best thinking at the time as to what the  
12 folks are thinking about that the rule should look  
13 like. And if there are some uncertainties or gaps  
14 that remain to be thought about, then point that out.  
15 Ask questions, point out the options, and that's the  
16 technique that we have followed in recent years. So  
17 we do have quite a bit of flexibility provided that  
18 the proposal is done skillfully.

19 CHAIRMAN SELIN: Commissioner?

20 COMMISSIONER de PLANQUE: That's all. I'm  
21 looking forward to next steps.

22 CHAIRMAN SELIN: Doctor Morris, let's talk  
23 about the direct final rulemaking now. Now, when I  
24 think about all the issues that can arise about what  
25 is a negative comment to stuff, is that still a good

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1 idea? I mean, can we do this in a way that --

2 DOCTOR MORRIS: We're going to have to use  
3 this selectively. For very routine and  
4 noncontroversial rules, and there are going to be a  
5 lot of those, it was a recommendation of the  
6 Administrative Conference in the National Performance  
7 Review and I did not want to neglect that possibility.

8 CHAIRMAN SELIN: I would personally like  
9 you to take a look at the last two years and see, if  
10 you'd had this in hand, where would you have applied  
11 it. Because, I mean, in principle I don't have any  
12 problem with this, but in practice there are so many  
13 questions that I wonder if we'd have a net savings by  
14 going through a three step process instead of just a  
15 two step process. So I think concrete examples might  
16 be better than arguing in general as to whether this  
17 is a good idea. Would we have done it?

18 COMMISSIONER REMICK: We have. Am I  
19 correct, General Counsel, that the Part 52, bringing  
20 in compliance with the --

21 CHAIRMAN SELIN: We had a statute.

22 COMMISSIONER REMICK: -- Policy Act --

23 MR. PARLER: Yes. Of course, we got a  
24 lawsuit out of that which we did not lose on, but  
25 after that happened the person that brought the

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1 lawsuit decided that if indeed the Commission would  
2 approve going out after the fact for comments and they  
3 had that opportunity they would drop the lawsuit, and  
4 that's what we did. There are instances like that  
5 where we could go out where we could make the argument  
6 that this is something that has to be done to conform  
7 to something else, in other words the policy trail has  
8 already been laid, that foundation is there and we  
9 just engaged in a conforming implementation. In my  
10 judgement, those situations would be rare.

11 It is also my experience that whenever  
12 we -- not you folks, but predecessors have tried to  
13 cut corners or do things, that usually leads to more  
14 problems than it solves. But there are a few cases  
15 where it would be worth at least thinking about this  
16 approach, but it wouldn't be used frequently.

17 COMMISSIONER REMICK: The point I was  
18 trying to get at, this is not really something new, in  
19 effect.

20 MR. PARLER: That is correct, sir.

21 COMMISSIONER REMICK: Yes.

22 MR. OLMSTEAD: Now, I might add that the  
23 Administrative Conference made this recommendation  
24 primarily for Cabinet agencies because the Food and  
25 Drug Administration has to go up through the Secretary

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1 of HHS to OMB to the Vice President and back down both  
2 for the proposed and final rule and this was a way to  
3 avoid that process.

4 CHAIRMAN SELIN: For us --

5 MR. OLMSTEAD: For us it doesn't apply.

6 CHAIRMAN SELIN: Closing comments?

7 COMMISSIONER ROGERS: Well, just on that  
8 one, I would hope that it would be very very rare and  
9 only in very special situations that we would employ  
10 that because it seems to me that it flies in the face  
11 of the whole philosophy of everything we're doing  
12 these days to be very open, give plenty of  
13 opportunities for public comment and participation, so  
14 it goes without saying that it should be used very  
15 sparingly.

16 I just want to say that I think that this  
17 effort has been an excellent one and the focus at the  
18 front end of the process is the right place and that  
19 I feel that starting to build in the use of new  
20 technology is important and I certainly want to try to  
21 encourage it in every way.

22 I think the Reg Net concept really should  
23 be pursued as a useful adjunct to what we've done  
24 before and I would hope that we would continue to put  
25 the resources behind things such as Reg Net and

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1 MOSAIC. We're one of the leading agencies in the  
2 government right now in this, not so far ahead of  
3 everybody else that it's ridiculous, but I think we  
4 are right at the front and I think it's a very good  
5 place for us to be and I hope that we'll be able to  
6 continue to stay there.

7 CHAIRMAN SELIN: Commissioners?

8 COMMISSIONER REMICK: No, thank you.

9 COMMISSIONER de PLANQUE: Just one final  
10 thing. I was struck in your report that one of the  
11 problems you identified was that delays in rulemaking  
12 schedules have often occurred due to inadequate  
13 definition of the problem the rulemaking is addressing  
14 and I would just say we should keep that in mind in  
15 this whole process too. Let's make sure that we've  
16 identified and really examined what the problem is  
17 we're trying to solve. And if there isn't a problem,  
18 then anything we should do should be in the mode of  
19 enhancing the process and improving the process.

20 CHAIRMAN SELIN: I think you've done a  
21 terrific job. Reading the report, I have to say I was  
22 somewhat skeptical that, you know, if the problem is  
23 that people don't do what their job tells them to do,  
24 changing the process -- but I've changed my mind  
25 listening to this discussion. I think you really have

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1 come up with a set of proposals that will facilitate  
2 happy trends that have started up already. I mean, if  
3 we went back to the Commission of the early '80s, I  
4 don't know how any of this would work, but I don't  
5 think that's what we should be worrying about.

6 I think one should assume a reasonably  
7 responsible, reasonably collegial Commission and a  
8 staff that's trying to figure out what the Commission  
9 wants and a much broader general public than we've  
10 dealt with in the past, and I think all of those three  
11 characteristics are built into your proposals. I'm  
12 really very enthusiastic. Except for this direct  
13 final rulemaking piece, I'm really quite enthusiastic  
14 about what you're recommending here and I'm sure the  
15 Commission will be anxious to get guidance back to you  
16 preferably this month while we still have a pretty  
17 full set of Commissioners.

18 Thank you very much.

19 (Whereupon, at 11:47 a.m., the above-  
20 entitled matter was adjourned.)  
21  
22  
23  
24  
25

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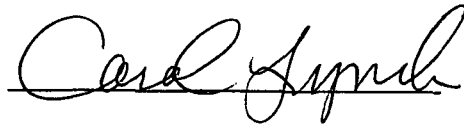
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of the United States Nuclear Regulatory Commission entitled:

TITLE OF MEETING: BRIEFING ON REVIEW OF RULEMAKING PROCESS

PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: JUNE 9, 1994

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# **IMPROVEMENTS IN RULEMAKING PROCESS BRIEFING FOR THE COMMISSION**

**JUNE 9, 1994**

**OFFICE OF THE GENERAL COUNSEL  
OFFICE OF NUCLEAR REGULATORY RESEARCH**

**CONTACT: BILL M. MORRIS  
PHONE: 415-6207**

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**FEDERAL REGULATORY IMPROVEMENT**

- o ADMINISTRATIVE PROCEDURE ACT**
- o REGULATORY FLEXIBILITY ACT**
- o PAPERWORK REDUCTION ACT**
- o EXECUTIVE ORDERS**
- o NATIONAL PERFORMANCE REVIEW**
- o ACUS RECOMMENDATIONS**



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**PROPOSALS FOR IMPROVEMENT**

- o RRG**
- o NUMARC**
- o ADMINISTRATIVE CONFERENCE**
- o NATIONAL PERFORMANCE REVIEW**





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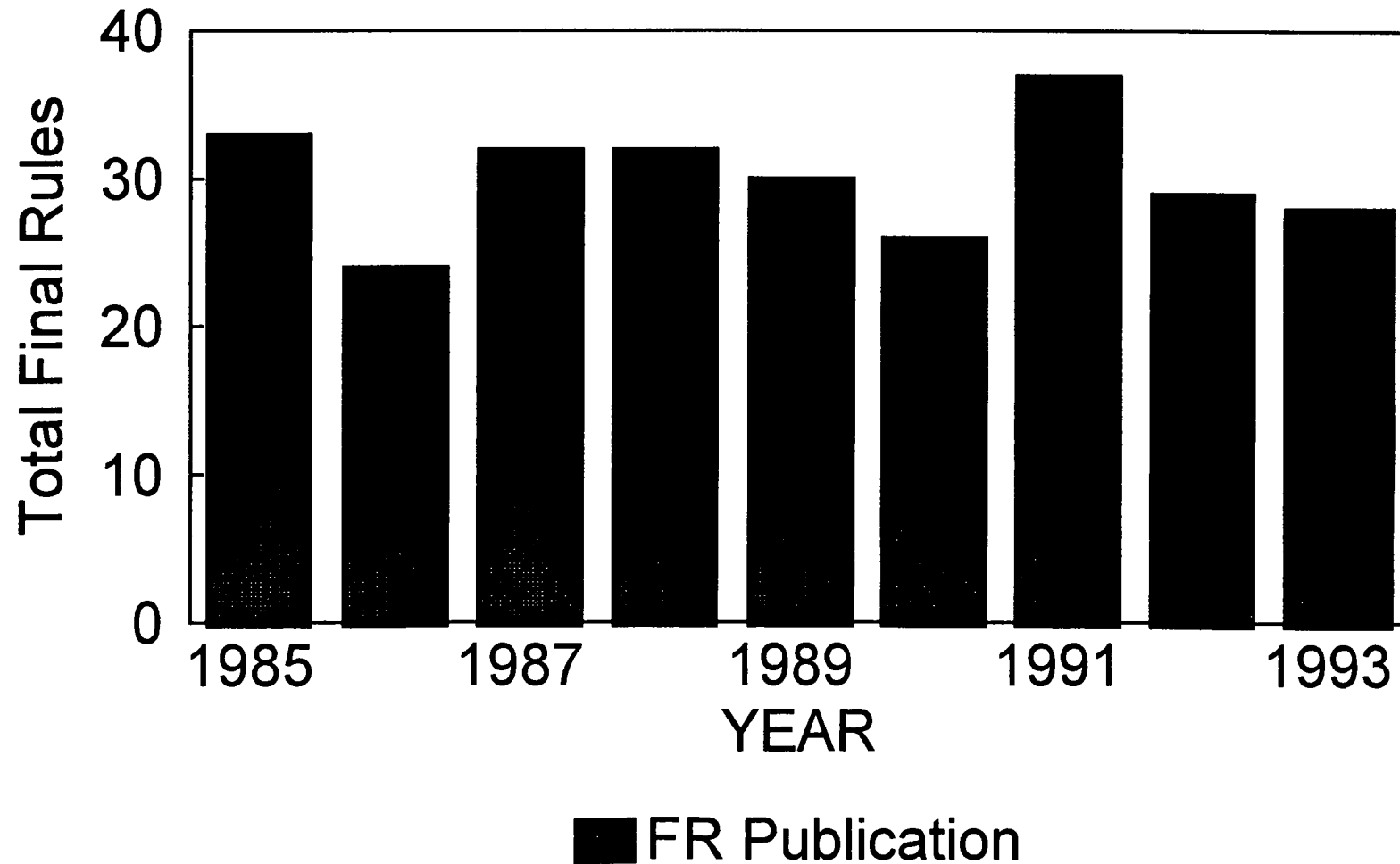
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**NRC RULEMAKING ENVIRONMENT**

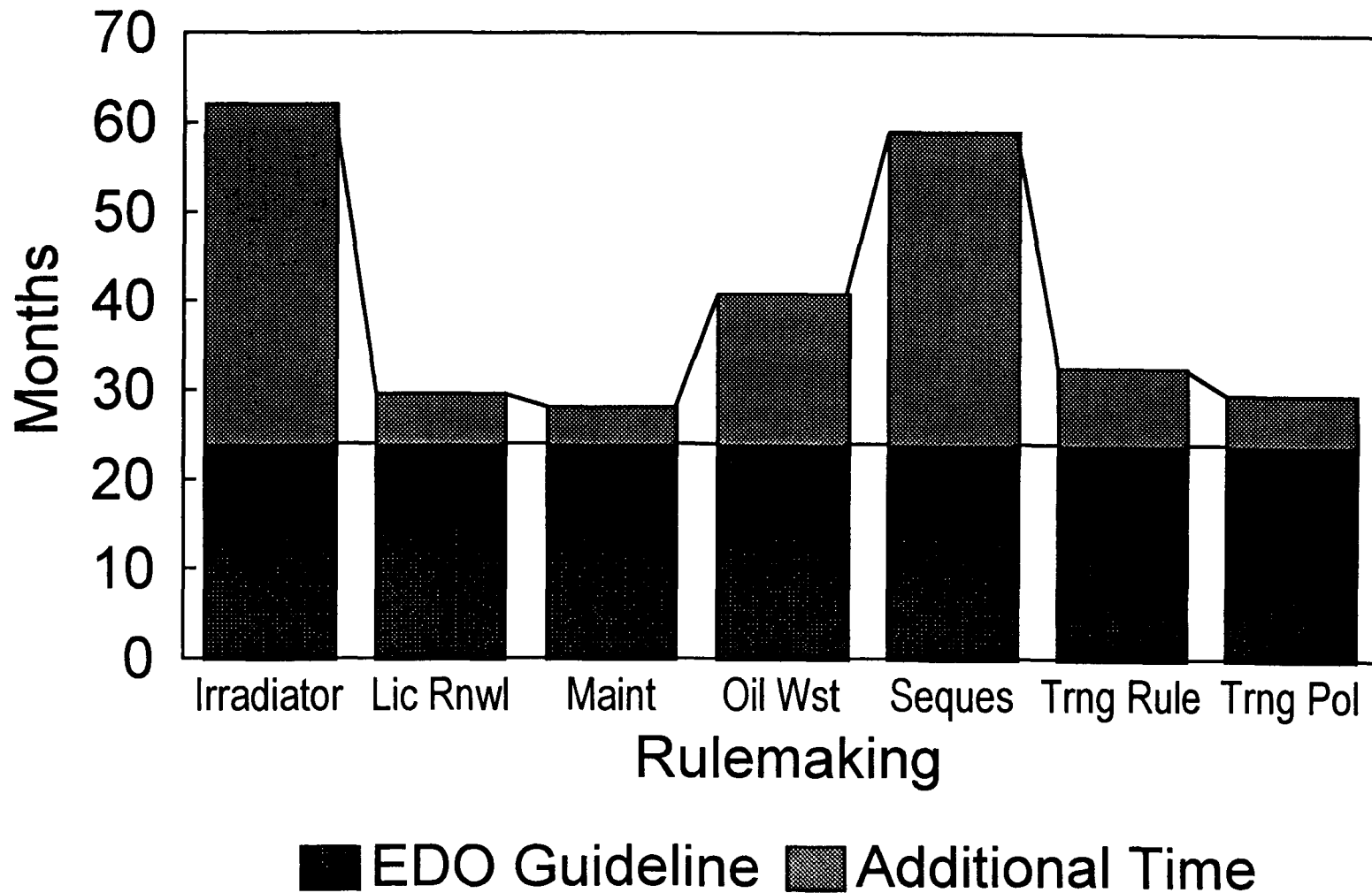
- o NUREG/BR-0053, NRC REGULATIONS HANDBOOK**
- o COMMITTEE TO REVIEW GENERIC REQUIREMENTS (CRGR)  
(BACKFIT ANALYSIS)**
- o NATIONAL ENVIRONMENT POLICY ACT**
- o OFFICE CONCURRENCE PROCESS**
- o PUBLIC COMMENT/PARTICIPATORY PROCESSES**

# 10 CFR FINAL RULES BY YEAR

## 1985-1993



# Rulemakings Exceeding EDO Guideline Since 1985





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**IDEAS FOR THE FUTURE**

- O REGULATORY NETWORKS (REG NET, ARIS)**
- O FACILITATED ELECTRONIC BULLETIN BOARDS**
- O WITHDRAWALS/AMENDMENTS & REPEALS**
- O MOSAIC, DISTRIBUTED AND VIRTUAL NETWORKS**



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**IMPROVEMENTS IN RULEMAKING PROCESS**

- O COMMITMENT CONTAINED IN REGULATORY REVIEW GROUP IMPLEMENTATION PLAN (SECY-94-003)**
- O OBJECTIVES INCLUDE:**
  - SHORTER RULEMAKING SCHEDULES**
  - IMPROVED COORDINATION**
  - MORE EFFICIENT USE OF STAFF RESOURCES**



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**PROPOSED IMPROVEMENTS IN  
RULEMAKING PROCESS**

- 0 IMPROVED PLANNING**
- 0 GREATER USE OF STEERING COMMITTEE APPROACH**
- 0 IMPROVED CONCURRENCE PROCESS**
- 0 EDO PUBLICATION OF RULES**
- 0 DIRECT FINAL RULEMAKING**
- 0 INTERACTION WITH ADVISORY COMMITTEES**



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**PROPOSED IMPROVEMENTS IN  
RULEMAKING PROCESS (CONTINUED)**

- O ELECTRONIC RULEMAKING BULLETIN BOARDS**
- O ENHANCED CONTRACTOR ASSISTANCE**
- O RULEMAKING MANAGEMENT DIAGNOSTIC SYSTEM**



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**IMPROVED PLANNING**

- O CONSIDERABLY MORE INFORMATION WOULD BE DEVELOPED PRIOR TO SEEKING EDO PERMISSION TO INITIATE RULEMAKING THAN IS CURRENT PRACTICE**
- O SPECIFIC IMPROVEMENTS WOULD INCLUDE**
  - BETTER PRELIMINARY CONCEPT OF WHY THE RULE IS NEEDED AND WHAT WOULD BE REQUIRED OF LICENSEES**
  - ASSESSMENT OF WHETHER THE RULE IS LIKELY TO BE COST-EFFECTIVE AND WOULD MEET BACKFIT AND SAFETY GOAL CRITERIA WHERE THESE ARE APPLICABLE**





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**IMPROVED PLANNING (CONTINUED)**

- **IDENTIFICATION OF POTENTIAL LEGAL COMPLICATIONS**
- **ASSESSMENT OF POTENTIAL PROBLEMS WITH AGREEMENT STATE IMPLEMENTATION**
- **PLANS FOR COMPLETING AND IMPLEMENTING THE RULE, INCLUDING RESOURCE NEEDS AND SUPPORTING DOCUMENTS SUCH AS REGULATORY GUIDES, GEIS, INSPECTION PLANS**
- **RECOMMENDATION ON NEED FOR INTEROFFICE STEERING GROUP**



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**IMPROVED PLANNING (CONTINUED)**

- **IDENTIFICATION OF KEY STAFF AND THEIR ALTERNATES IN EACH OFFICE WHO WILL BE COMMITTED TO SUPPORT RULEMAKING**
- **RECOMMENDATION ON WHETHER ENHANCED PUBLIC PARTICIPATION OR NEGOTIATED RULEMAKING SHOULD BE PURSUED**
- **PLAN WOULD INDICATE WHETHER PROPOSED/FINAL RULES ARE TO BE ISSUED BY EDO OR COMMISSION**
- **PLANS INCLUDING THE RULE CONCEPT WOULD BE CONCURRED IN AT HIGHEST MANAGEMENT LEVELS AND MADE AVAILABLE FOR EARLY INPUT BY ADVISORY COMMITTEES OR THE COMMISSION**



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**GREATER USE OF STEERING COMMITTEE APPROACH**

- O BASED ON PAST EXPERIENCE STEERING COMMITTEE  
OVERSIGHT OF RULEWRITING TEAM GREATLY  
FACILITATES CONCURRENCE**
- O APPROACH TO BE CONSIDERED FOR ALL RULEMAKINGS  
AND THE METHOD OF CHOICE FOR URGENT, COMPLEX OR  
CONTROVERSIAL RULES**



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**IMPROVED CONCURRENCE PROCESS**

- O WOULD FOCUS CONCURRENCE ON ACCURACY AND ON POLICY MATTERS RATHER THAN STYLE OR EDITING**
- O WOULD INVOLVE DESIGNATION OF AN OFFICE REPRESENTATIVE AND AN ALTERNATE WHO WOULD BE RESPONSIBLE FOR OVERSEEING AND OBTAINING OFFICE CONCURRENCE FOR A SPECIFIC RULEMAKING**
- O STEERING COMMITTEE MODE WOULD BE USED ON ANY URGENT, COMPLEX OR CONTROVERSIAL RULEMAKING**



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**IMPROVED CONCURRENCE PROCESS (CONTINUED)**

- o DEADLINES FOR CONCURRENCES TO BE ESTABLISHED AND MONITORED**
- o OEDO WOULD RESOLVE ANY IMPASSE NOT RESOLVED WITHIN SPECIFIED TIMEFRAME**
- o TO BE INCORPORATED IN AGENCY MANAGEMENT DIRECTIVES SYSTEM**



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**EDO PUBLICATION OF RULES**

- O PROPOSAL WOULD ALLOW EDO TO ISSUE PROPOSED RULES OF MAJOR POLICY SIGNIFICANCE**
- O IN ALL CASES, THE COMMISSION WOULD BE INFORMED OF THE EDO'S INTENTION TO PUBLISH RULES WELL IN ADVANCE BY TRANSMITTAL OF RULEMAKING PLAN**
- O COMMISSION WOULD HAVE THE OPTION OF ACTIVE INVOLVEMENT IN A PROPOSED RULE AT ANY TIME DURING THE PROCESS THROUGH OVERSIGHT OF THE EVOLVING RULE (E.G., THE PLAN AND THE INTERNAL RULEMAKING BULLETIN BOARD)**



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**EDO PUBLICATION OF RULES (CONTINUED)**

- O COMMENTS WOULD TYPICALLY BE REQUESTED ON MORE THAN ONE OPTION FOR SELECTED RULEMAKING ISSUES**
- O ALSO, IN THESE CASES, THE COMMISSION REVIEW PERIOD WOULD BE EXTENDED BEYOND THE CURRENT PRACTICE FOR NEGATIVE CONSENT (E.G., TO 10 DAYS)**
- O COMMISSION DECISIONMAKING WOULD SHIFT TO TIMEFRAME WHEN PUBLIC COMMENTS ARE AVAILABLE**



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**DIRECT FINAL RULEMAKING**

- O    APPROACH TO BE LIMITED TO ROUTINE/NON-  
CONTROVERSIAL RULE CHANGES**
- O    DIRECT FINAL RULE PUBLISHED**
- O    EFFECTIVE WITHIN X DAYS IF NO ADVERSE COMMENTS**
- O    IF ADVERSE COMMENTS, REVERT TO USUAL PROCEDURE**





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**ELECTRONIC RULEMAKING  
BULLETIN BOARDS**

- O PRELIMINARY RULEMAKING DOCUMENTS AND COMMENTS ON THEM WILL BE MADE AVAILABLE ON INTERNAL BULLETIN BOARD TO IDENTIFY ISSUES EARLY AND FACILITATE CONCURRENCE**
- O COMMISSION, OEDO AND ADVISORY GROUPS WILL HAVE EASY ACCESS TO EVOLVING RULES**
- O APPROVED RULEMAKING DOCUMENTS ELECTRONICALLY AVAILABLE TO PUBLIC THROUGH 1-800 NUMBERS, INTERNET OR OTHER NATIONAL INFORMATION NETWORKS**



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**INTERACTION WITH COMMITTEES**

- O APPROVED RULEMAKING PLANS AND EVOLVING RULES  
AVAILABLE TO COMMITTEES THROUGHOUT PROCESS**
- O STAFF WOULD MEET WITH COMMITTEES AT ANY TIME  
DURING RULE DEVELOPMENT PERIOD**
- O COMMITTEE COMMENTS WOULD BE ADDRESSED IN  
COMMISSION PAPER TRANSMITTING FINAL RULE**