

POLICY ISSUE
(Notation Vote)

April 4, 2016

SECY-16-0042

FOR: The Commissioners

FROM: Victor M. McCree
Executive Director for Operations

SUBJECT: RECOMMENDED IMPROVEMENTS FOR RULEMAKING TRACKING AND
REPORTING

PURPOSE:

To obtain Commission approval of the U.S. Nuclear Regulatory Commission (NRC) staff's recommended improvements for tracking and reporting rulemaking activities.

SUMMARY:

In a memorandum dated February 11, 2016, and titled, "Rulemaking Tracking and Reporting" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16054A193), the NRC Chairman directed the staff to provide a notation vote paper to the Commission recommending improvements for rulemaking tracking and reporting. An interoffice working group evaluated the current state of tracking and reporting and developed recommendations for Commission consideration. This paper recommends:

- 1) Developing a centralized rulemaking activity-tracking tool.
- 2) Issuing an annual, internal report (i.e., the Annual Rulemaking Report (ARR)) to inform budget decision-making and replace the Rulemaking Activity Plan (RAP), Common Prioritization of Rulemaking (CPR) Report, and Petition for Rulemaking (PRM) Status Report, and discontinuing the Rulemaking Activities by Fiscal Year Report.

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If the Commission approves these recommendations, the staff would:

- 1) Redesign the NRC public website's rulemaking pages to present accurate "real time" data on rulemaking activities.
- 2) Issue a "Glossary for Rulemaking Dataset" to define information tracked on rulemaking activities.
- 3) Implement conforming changes to office procedures and management directives, in parallel with ongoing rulemaking efforts.

BACKGROUND:

Chairman Tasking

On February 11, 2016, the Chairman, through a memorandum to the Executive Director for Operations (EDO), directed the NRC staff to provide a notation vote paper to the Commission to recommend improvements to the NRC's systems for tracking rulemaking activities and generating reports. The memorandum specified that the paper should address the following elements:

- A single, unified approach (consistent with existing legal requirements) to track rulemaking activities and inform (i.e., report to) the public and other stakeholders.
- Consistent terminology and definitions to characterize the type and status of rulemaking activities that are inherently understandable by the general public.
- Methods to ensure that the Commission, staff, and external stakeholders have "real time" access to view current information on rulemaking activities, as opposed to relying on snapshots in time available through papers or the NRC's public website.
- Improvements to the NRC's rulemaking website that reflect the items above, including a clear explanation of the current status of any given rulemaking activity.

Current Rulemaking Tracking and Reporting

The Office of Administration (ADM), as chair of the Rulemaking Coordinating Committee (RCC), currently tracks and reports on rulemaking activities. The RCC was established in May 1998 to ensure that the NRC rulemaking process remains consistent among the program offices. The RCC primarily focuses on providing consistent methods to develop and issue rules and to facilitate initiatives for improving all aspects of the rulemaking process.

The following sections provide a high-level summary of the current public and nonpublic NRC rulemaking reports. Enclosure 1, "Current U.S. Nuclear Regulatory Commission (NRC) Rulemaking Reports," provides more detail on the specific information presented in each report.

Public Rulemaking Reports

In accordance with Public Law 96-354, "The Regulatory Flexibility Act;"¹ and Executive Order 12866, "Regulatory Planning and Review,"² the NRC submits its portion of the Unified Agenda of Regulatory and Deregulatory Actions (the Unified Agenda) to the Office of Management and

¹ <https://www.gpo.gov/fdsys/pkg/STATUTE-94/pdf/STATUTE-94-Pg1164.pdf>.

² https://www.whitehouse.gov/sites/default/files/omb/inforeg/eo12866/eo12866_10041993.pdf.

Budget (OMB) in April and August of each year. The NRC's portion of the Federal Unified Agenda is a report containing rulemaking activities on which the NRC has recently completed, has proposed, or is considering action.

In accordance with Executive Order 12866, the NRC submits its Regulatory Plan to OMB annually in June. The NRC's Regulatory Plan is a statement of the significant regulatory actions that the NRC reasonably expects to issue in proposed or final form in the current fiscal year and beyond.

All agencies track and update data for both the Unified Agenda and the Regulatory Plan using an OMB shared database. Because these reports derive from external requirements, this paper does not make recommendations with respect to these periodic reports. However, the staff's recommendation would help generate these reports more consistently and efficiently.

Section 2.206(d) of the E-Government Act of 2002³ requires agencies to use electronic dockets for rulemakings. Electronic dockets must be publicly accessible at a Federal Government website. To comply with the act, NRC electronic dockets for rulemaking and PRM activities are publicly accessible on <http://www.regulations.gov>. The NRC's public website contains pages that index, by calendar year, rulemaking and PRM dockets, from 1999-present. These indexes link to the electronic docket for each activity on <http://www.regulations.gov>. The indexes also serve archival purposes.

The NRC's public website is updated when a new activity is initiated and a docket is created, or when a Commission determination on a PRM is published in the *Federal Register*. The staff updates the dockets on <http://www.regulations.gov> with *Federal Register* notices, public comments, and supporting information for rulemakings and PRMs when such information becomes available.

The NRC's Rulemaking Activities by Fiscal Year⁴ report is an annual summary of the NRC's rulemaking actions published in the *Federal Register*. The staff publishes the report on the NRC's public website every October. For knowledge management and archival purposes, the staff has been compiling the report since 1985.

In June 2015, the NRC launched a page on its public website that lists agency rulemaking activities and priorities⁵ and contains programmatic information on the NRC's prioritization process. The web page presents detailed information on a segment of rulemaking activities: those the agency plans to budget in the upcoming 2-year planning period. The staff develops this list of rulemaking activities using the RCC's CPR process.

Nonpublic Rulemaking Reports

Through the RCC, the staff prioritizes and budgets rulemaking activities with an internal SharePoint tracking tool. The NRC designed this tool to generate internal and external reports, and to collect and standardize data for inputting to external reporting mechanisms, including the NRC's public website. This internal tracking tool is also used to generate an annual report (i.e.,

³ <https://www.gpo.gov/fdsys/pkg/PLAW-107publ347/pdf/PLAW-107publ347.pdf>.

⁴ <http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/published-rules-by-year.html>.

⁵ <http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/rule-priorities.html>.

the CPR Report), which is used to support the budget process. The CPR Report lists all rulemaking activities, their priorities, and their budget estimates, for the upcoming 2-year planning period.

Since 1995, the staff has prepared and submitted an annual RAP to the Commission. The RAP is an information report on the agency's planned rulemakings and completed actions and is currently provided to the Commission annually in June. This report is also generated from the NRC's internal SharePoint tracking tool and is not made publicly available because it contains pre-decisional and budget information protected from disclosure in accordance with OMB Circular A-11, "Preparation, Submission, and Execution of the Budget," dated June 2015.

The staff also prepares a semiannual PRM Status Report for the EDO. This report contains pre-decisional information on all open petitions. The Commission receives a copy of the latest report with the annual RAP.

DISCUSSION:

This section describes the recommendations to address each element of the February 11, 2016, memorandum from the Chairman, as well as feedback obtained from a public meeting.

Single Unified Approach To Track Rulemaking Activities and Inform Stakeholders

The Chairman directed that the staff develop a notation vote paper to address a "single unified approach (consistent with existing legal requirements) to track rulemaking activities and inform (i.e., report to) the public and other stakeholders." To address this element, the staff reviewed the current approach for tracking and organizing rulemaking information, existing rulemaking reports produced by the NRC (including those required by external directives), and the type of information (i.e., data fields) contained in each report.

The staff developed its current internal rulemaking-tracking tool in 2014, and implemented it in January 2015. The staff identified that the tracking tool, as currently configured, requires additional data fields to provide the public a complete picture of rulemaking activities. The staff concluded that maintaining a centralized internal tracking tool for agency rulemaking activities and publishing that data to the NRC's public website would improve transparency and ensure that the NRC presents the information in a clear, timely, succinct, and accurate manner. Enclosure 2, "Glossary for Rulemaking Dataset," provides a list of information that would be tracked for each rulemaking activity, as well as definitions for each piece of information tracked. The section of this paper titled "Approaches for Data Management" describes potential information technology (IT) solutions that the staff could use to develop the centralized internal tracking tool.

The staff then evaluated whether it could eliminate any existing reports to reduce redundant reporting. As noted in the "Background" section, external directives require the Unified Agenda and the Regulatory Plan so the staff did not evaluate these reports for elimination. In addition, certain reports are necessary to capture underlying assumptions in budget formulations, but the reports currently used for this purpose could be consolidated. The staff recommends that it provide one annual report, the "Annual Rulemaking Report," each June to replace the existing RAP, CPR Report, and PRM Status Report.

The ARR would be organized into four sections: 1) funded rulemaking activities for the next two fiscal years; 2) unfunded rulemaking activities; 3) funded rulemaking activities anticipating completion in the current fiscal year; and 4) PRM activities. Each section would have a summary (or roll-up) section to organize and introduce the content of the section. Enclosure 3, "Example Annual Rulemaking Report," provides a template for the report. This report would contain budget information, and would remain internal to the NRC. The report would provide administrative information (e.g., Title, Regulatory Identifier Number) as well as more detailed information specific to that rulemaking activity (e.g., abstract, CPR priority and justification, and budget information). The report would not contain detailed milestone history, schedule, or some additional fields previously provided by the RAP; those additional fields would be available in the tracking tool and published to the website. However, this approach is appropriate in order to gain efficiencies in generating and reviewing the reports and to mitigate the likelihood of the information becoming outdated or erroneous soon after generation. The staff believes that this recommendation would meet the intent of the Commission direction provided to the staff in the staff requirements memorandum (SRM) for SECY-15-0129, "Commission Involvement in Early Stages of Rulemaking," dated February 3, 2016 (ADAMS Accession No. ML16034A441). That SRM approved the staff's recommendation to prepare a rulemaking report for submittal to the NRC's decision makers and budget developers.

By maintaining a tracking system and publishing updated information to the public website, the staff can include fewer details in timestamped reports. As discussed previously, the staff would maintain the Unified Agenda and Regulatory Plan and develop a new, streamlined ARR for budget decision-making. As such, the staff recommends that it discontinue the following reports:

- RAP
 - The proposed ARR, the tracking tool, and the NRC's public website, would contain the information provided in the RAP, but with less detailed historical milestones. The documents that represent major milestones in the rulemaking process would continue to be available on <http://www.regulations.gov> in the docket for each activity. The staff would be trained and provided periodic reminders and checks to ensure dockets are complete and contain documents reflecting all major milestones.
- CPR Report
 - All information currently in the CPR Report would be provided in the proposed ARR. The summary (or roll-up) section of the "funded rulemaking activities for the next two fiscal years" would replace the CPR report that the staff has used to support budget reports.
- Rulemaking Activities by Fiscal Year
 - This report is historical in nature, but would have some overlap with the proposed web page containing "real time" access to current rulemaking activities. A completed activity would remain on the proposed "real time" access page until the NRC has published the next semi-annual Unified Agenda announcing the completion of the rule. For efficiency, this report would be replaced by links to a new *Federal Register* indexing tool. The staff would retain the existing collection of reports for archival.
- PRM Status Report
 - The PRM Status Report would no longer be needed because both the proposed website with "real time" access to current rulemaking activities and the ARR would contain current PRM information. Historical information would be in the PRM docket.

- The staff would be trained and provided periodic reminders and checks to ensure petition dockets are complete and contain documents reflecting all major milestones.
- Rulemaking and Petition Dockets
 - Moving forward, this archival collection would contain only closed rulemaking and petition for rulemaking dockets. The NRC would continue to meet section 2.206(d) of the E-Government Act of 2002 because the proposed page with “real time” access to current rulemaking activities would continue to link to the docket folders on <http://www.regulations.gov>.

The staff considered the timing for when it adds a rulemaking activity to the tracking tool and when it removes a rulemaking activity from the tracking tool. A key factor is that once a rulemaking activity is included in the tracking tool, that information would be published on the NRC’s public website and added to any reports produced from the tracking tool. For activities involving a rulemaking plan, the staff considered whether it should add the rulemaking to the tracking tool when it provides the rulemaking plan to the Commission. The rulemaking plan would be publicly available on the NRC’s website, thus adding it to the rulemaking-tracking tool would be consistent with information on the website. However, this could cause confusion since the rulemaking process would not be initiated until the Commission approves the rulemaking plan in an SRM. Adding an activity to the tracking tool prior to formal approval of the rulemaking plan could also be perceived as contrary to Commission direction in SRM-SECY-15-0129. As such, the staff recommends that rules would be added as soon as formal rulemaking initiates (i.e., when the Commission approves rulemaking in an SRM). However, the staff would add rules with delegated authority as soon as necessary to support budget formulation. If during implementation, the staff identifies that other factors impact the timing of adding rules to the tracking tool, the staff would update the tool (and process) accordingly. Rulemakings (whether Commission-directed or delegated) would be removed from the tracking tool when completion is noted in a published Unified Agenda. The timing for when rulemakings are added or removed from the tracking tool would not impact the existing practice for when *Federal Register* notices are issued throughout the rulemaking process.

The staff would add a PRM to the tracking tool when the staff docket the PRM for review. The staff would remove a PRM from the tracking tool when the PRM is withdrawn by the petitioner or denied. When the Commission approves a staff recommendation to consider the requests of a PRM in the rulemaking process, the staff would reclassify the PRM into one of the rulemaking activity categories for the purposes of tracking. Alternatively, if the staff will consider the PRM in an ongoing rulemaking, then the staff would list that PRM in the “Associated PRM” field for that ongoing rulemaking. The timing for when PRMs are added, removed, or reclassified within the tracking tool does not alter the existing practice for when *Federal Register* notices are issued throughout the PRM process.

Consistent Terminology and Definitions

The Chairman directed the staff to address “consistent terminology and definitions to characterize the type and status of rulemaking activities that are inherently understandable by the general public.” In its review of existing reports and recent requests for information, the staff determined that all fields in the tracking tool should be defined. Furthermore, the definitions should be clear and written in plain language.

Enclosure 2, “Glossary for Rulemaking Dataset,” is a list of rulemaking information (i.e., data fields) that the staff recommends be tracked to provide the level of reporting envisioned by this paper. Each field in the glossary is defined using plain language. The staff would post the glossary on the NRC’s public website to assist public stakeholders. The staff would also use information listed in the glossary to respond to requests regarding details on rulemaking activities.

“Real Time” Access to Information

The Chairman directed that the notation vote paper also address “methods to ensure that the Commission, staff, and external stakeholders have ‘real time’ access to view current information on rulemaking activities,” rather than having to rely on the “snapshot in time” that is provided by a static report or formal paper, which becomes quickly outdated. The staff considered when and how data fields in a centralized tracking tool would be updated and published to the NRC’s public website.

The staff considered the roles and responsibilities for assembling and updating information collected in a centralized tracking tool. Under the current business process, rulemaking project managers across the agency provide updated data several times a year, on a schedule that coincides with the publication cycle for the reports discussed in Enclosure 1. To provide “real time” access, the project manager assigned to each rulemaking activity would be responsible for providing, independent of any data call, updates on individual milestones to a primary contact in ADM. Some updates, such as schedule milestones, may require management review prior to updating. The project manager would be responsible for obtaining the appropriate level of alignment on each update. The primary contact in ADM would add the updated information to the centralized tracking tool for subsequent publication to the public website. The staff believes that continuing to designate a primary contact to update the tracking tool would ensure quality control and lower the possibility of human error in manipulating the tracking tool. The staff discusses the impact of this process change in Enclosure 4, “Resources.”

The staff also evaluated the concept of “real time” updates to the tracking tool and the NRC’s public website. The details of “real time” would vary in implementation of these recommendations; details are provided in the discussion of the approaches for data management.

Improvements to the NRC’s Public Website

The Chairman directed that the notation vote paper also address “improvements to the NRC’s rulemaking website that reflect items in the other elements described above, including a clear explanation of the current status of any given rulemaking activity.”

The staff recommends redesigning the pages of the NRC’s public website that contain rulemaking information. The details of the display and content of the NRC’s public website would be determined during implementation. However, at a minimum, the pages would still contain programmatic content (e.g., descriptions of the rulemaking and PRM processes, opportunities for public involvement, links to Title 10 of the *Code of Federal Regulations*). In addition, the pages would have a prominent link to a new page that would display rulemaking activities and associated fields, which would be updated in “real time.” The pages would have links to <http://www.regulations.gov> dockets, the Unified Agenda and Regulatory Plan, and the

NRC's document collection web page. The staff would also consider whether the NRC's homepage should display a direct link to the redesigned rulemaking webpages.

Approaches for Data Management

The staff explored ways to create a new tracking tool or modify an existing tracking tool in order to develop the centralized tracking tool that would provide the rulemaking information (i.e., data fields) defined in Enclosure 2. The staff also evaluated how it could make that information available on the NRC's public website. This section describes two IT approaches that could meet the objective to track and report on rulemaking activities. However, in order to implement the recommendations, if approved by the Commission, most efficiently, the staff would use Approach 1 (i.e., modify the existing tracking tool).

To inform its decision-making, the staff evaluated each approach using some bounding assumptions, including that the tool would have the capability to track the current inventory of rulemaking activities and 40 data fields for each activity. Additionally, this tool and the SharePoint interface would not provide any workflow automation and would be limited to the configuration reporting options available in SharePoint. Finally, in order to estimate resources, the staff assumes that this tool, once modified, would not require enhancements, new capabilities, or extended configuration as part of ongoing operation and maintenance.

Approach 1: Modify Existing Tracking Tool

Under Approach 1, the staff would enhance the existing SharePoint tool (described previously in this paper) to include all required data fields for rulemaking activities. This tracking tool would generate the recommended ARR and would also be used to respond to internal and external requests.

Under Approach 1, rulemaking information in the tracking tool could be published to the NRC's public website on a "real time" periodicity determined by the staff (e.g., biweekly) using a data file. The NRC uses a similar approach to search and display Commission calendar information.

The staff estimates that Approach 1 would be significantly less resource intensive than Approach 2. Detailed resource estimates are provided in Enclosure 4. The following pros and cons are associated with Approach 1:

Pros:

- Would use existing tools and capabilities, and would therefore result in less required training for the data collectors. The staff would continue to benefit from resources invested to date on developing the existing tracking tools.
- Would be implemented faster because it consists of enhancements and not a new design.
- Would maintain the existing process for budget formulation and priority assessment.

Cons:

- Would require additional modifications to enhance the existing application.
- Additional resources might be required to support the enhancements.
- In the event of a global SharePoint upgrade, additional costs might be incurred.

Approach 2: Develop a New Tracking Application Using the NRC's Business Process Automation Stack (BPAS) Platform.

Under Approach 2, the NRC would design a new application on the BPAS platform to track and report rulemaking activities over the entire set of data fields. This application would generate the recommended ARR, and be used to respond to internal and external requests.

Under Approach 2, rulemaking information could be published to the NRC's public website in a similar timeframe to, or faster than, Approach 1 depending on desired capability. This would be similar to existing NRC programs currently using the BPAS platform (e.g., the Public Meeting Notice System, NUREG-0933 System for Publication of Generic Issues).

For the stated requirements and assumptions, the staff estimates that Approach 2 would be significantly more resource intensive than Approach 1. Because of its extended capabilities, the BPAS platform has a higher "buy-in" cost. When the extended features are not needed, as in this case, the return on the larger investment is not realized. Based on the fairly basic requirements to track and publish rulemaking activities, this solution may be excessive. The following pros and cons are associated with Approach 2:

Pros:

- Uses the BPAS platform, which is proven to be capable and effective for business process and data management.
- BPAS has additional capabilities including automated workflow that would be useful if system requirements or complexity were to grow significantly.

Cons:

- Would require developing a new application, resulting in a significantly longer implementation timeline and higher cost than Approach 1.
- Because the rulemaking dataset would be relatively small compared to other programs, BPAS is not the most cost efficient solution.
- Because the system would be new, additional training would be required. Further, additional risks (e.g., malfunctions, unintended consequences) could be experienced as the new system is developed.
- In the event of a global BPAS upgrade, additional costs might be incurred.

In order to use staff resources efficiently, the staff concluded that the objective to clearly and accurately report and track rulemakings should be met using the least resource intensive approach. As such, if the Commission approves the development of a centralized rulemaking activity-tracking tool, the staff will modify the existing SharePoint tool (i.e, Approach 1).

Public Meeting

The staff conducted a Category 3 public meeting on March 11, 2016. The summary of that meeting is available in ADAMS at Accession No. ML16075A045. The following points describe feedback obtained during the public meeting and changes the staff made to address the feedback:

- The rulemaking-tracking tool should include a field for rulemaking phase. The staff updated the glossary to include a definition for various rulemaking phases and would include a data field with this information in the tracking tool, if approved by the Commission.
- The web pages should contain a link to external directives regarding reporting. In the implementation phase of the website redesign, the staff would determine the appropriate way to include such information.
- It would be helpful to have another public meeting when a working model (or mock-up) of the redesigned web pages is available. The staff would consider another public meeting at an appropriate time during the implementation phase.
- It is difficult to find information related to public meetings. As part of training on the new tracking and reporting tool, the staff would be reminded to include all notices for, and summaries of, public meetings (including interactions with the Advisory Committee for Reactor Safeguards) in the docket folder for each rulemaking activity on <http://www.regulations.gov>.
- Rulemaking plan information should be included in the tracking tool. The staff added a data field for "Rulemaking Plan Information" as a result.

Other Considerations

The staff evaluated conforming changes (e.g., to office procedures and management directives) that would be necessary as a result of these recommendations, if approved by the Commission. However, many of these directives and office procedures would be affected by other ongoing activities, in particular the recent Commission direction in the SRM for SECY-15-0129 and the formation of a Center of Expertise (COE) in the area of rulemaking. As such, the conforming changes resulting from these recommendations would be rolled into those planned updates.

The recommendations provided in this paper resolve a near-term objective to track and report rulemaking activities. During the implementation of these recommendations, and in conjunction with other changes associated with forming the COE, implementing Project Aim recommendations, and implementing the SRM for SECY-15-0129, the staff may identify alternative approaches or improvements to meet long-term objectives.

RECOMMENDATIONS:

The staff recommends that the Commission:

1. Approve:
 - a) Developing a centralized rulemaking activity-tracking tool.
 - b) Issuing an annual, internal report (i.e., the ARR) to inform budget decision making and replace the RAP, CPR Report, and PRM Status Report and discontinuing the Rulemaking Activities by Fiscal Year Report.
2. Note: If the Commission approves the recommendations above, the staff would:
 - a) Redesign the rulemaking pages on the NRC's public website to present accurate "real time" data on rulemaking activities.

- b) Issue a "Glossary for the Rulemaking Dataset," which would provide definitions for information tracked on rulemaking activities.
- c) Implement conforming changes to office procedures and management directives, in parallel with ongoing rulemaking efforts.

RESOURCES:

There are no resources budgeted in fiscal years 2016 and 2017 for this effort. The recommendations in this paper would result in additional net costs, as estimated in Enclosure 4. The staff expects that resources would be incurred as a result of this effort, both in the near-term (i.e., implementation) and in the long-term (i.e., operation and maintenance). Some resources would be saved by discontinuing certain reports and consolidating that information into the ARR, as described qualitatively in Enclosure 4. The staff believes these overall net costs are justified in light of the enhanced clarity and openness gained by implementing the recommended approach.

COORDINATION:

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

/RA/

Victor M. McCree
Executive Director
for Operations

Enclosures :

1. Current NRC Rulemaking Reports
2. Glossary for Rulemaking Dataset
3. Example ARR
4. Resources

- d) Issue a "Glossary for the Rulemaking Dataset," which would provide definitions for information tracked on rulemaking activities.
- e) Implement conforming changes to office procedures and management directives, in parallel with ongoing rulemaking efforts.

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Enclosures :

1. Current NRC Rulemaking Reports
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3. Example ARR
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