

**FY20/21 Guidance on
Common Prioritization of Rulemaking
Factor Selection Criteria**

This document provides guidance to the U.S. Nuclear Regulatory Commission (NRC) staff in determining the appropriate factors to be used for each rulemaking activity in the Common Prioritization of Rulemaking (CPR) process. The CPR process requires selecting values for the following four factors for each rulemaking:

- Factor A: NRC Strategic Plan strategic goals
- Factor B: NRC principles of good regulation
- Factor C: Governmental priority
- Factor D: Public priority

The following discussion provides guidance on how to select the appropriate factors and associated values so that each rulemaking activity, regardless of which office(s) the rulemaking would affect, is scored consistently. Table 1 provides the values assigned to each factor.

This guidance document uses objectives and principles from the NRC [Strategic Plan for Fiscal Years \(FY\) 2018-2022](#), dated February 12, 2018, as criteria for determining rulemaking priorities. As the Strategic Plan is updated or revised, the NRC's Rulemaking Coordinating Committee (RCC) is responsible for evaluating the potential effect of that update or revision on this guidance document. The RCC will decide, on a case-by-case basis, whether to incorporate the update or revision into the guidance document and whether to re-prioritize rulemakings.

Factor A

The NRC's [Strategic Plan for FY 2018-2022](#) contains 2 strategic goals:

1. Safety: Ensure the safe use of radioactive materials.
2. Security: Ensure the secure use of radioactive materials.

These goals reflect the NRC's mission—to license and regulate the Nation's civilian use of radioactive materials to provide reasonable assurance of adequate protection of public health and safety, to promote the common defense and security, and to protect the environment. The NRC's strategies to implement these goals are presented below.

The safety goal in the NRC's Strategic Plan has one objective and multiple associated strategies.

Objective: Prevent, mitigate, and respond to accidents and ensure radiation safety.

Safety Goal Strategies:

1. Maintain and enhance the NRC's regulatory programs, using information gained from domestic and international operating experience, lessons learned, and advances in science and technology.
2. Further risk-inform the current regulatory framework in response to advances in science and technology, policy decisions and other factors, including prioritizing efforts to focus on the most safety-significant issues.

3. Ensure the effectiveness and efficiency of licensing and certification activities to maintain both quality and timeliness of licensing and certification reviews.
4. Maintain effective and consistent oversight of licensee performance with a focus on the most safety-significant issues.
5. Maintain material safety through the National Materials Program in partnership with Agreement States.
6. Identify, assess, and resolve safety issues.
7. Ensure the NRC's readiness to respond to incidents and emergencies involving NRC-licensed facilities and radioactive materials and other events of domestic and international interest
8. Verify that nuclear facilities are constructed and operated in accordance with permits and licenses and that the environmental and safety regulatory infrastructure is adequate to support the issuance of new licenses.
9. Maintain and enhance the NRC's regulatory programs, using information gained from domestic and international operating experience, lessons learned, and advances in science and technology.
10. Further risk-inform the current regulatory framework in response to advances in science and technology, policy decisions and other factors, including prioritizing efforts to focus on the most safety-significant issues.
11. Ensure the effectiveness and efficiency of licensing and certification activities to maintain both quality and timeliness of licensing and certification reviews.
12. Maintain effective and consistent oversight of licensee performance with a focus on the most safety-significant issues.
13. Maintain material safety through the National Materials Program in partnership with Agreement States.
14. Identify, assess, and resolve safety issues.
15. Ensure the NRC's readiness to respond to incidents and emergencies involving NRC-licensed facilities and radioactive materials and other events of domestic and international interest
16. Verify that nuclear facilities are constructed and operated in accordance with permits and licenses and that the environmental and safety regulatory infrastructure is adequate to support the issuance of new licenses.

The security goal in the NRC's Strategic Plan has two objectives and multiple associated strategies:

Objective 1. Ensure protection of nuclear facilities and radioactive materials.

Security Goal Strategies:

1. Maintain and further risk-inform the current regulatory framework for security using information gained from operating experience, lessons learned, external and internal assessments, technology advances, and changes in the threat environment.
2. Maintain effective, consistent, and risk-informed oversight of licensee performance with respect to NRC security requirements.
3. Maintain material security through the National Materials Program in partnership with the safety programs administered by the Agreement States.
4. Proactively identify, assess, and address threats, vulnerabilities, and security risks

5. Support U.S. national security interests and nuclear nonproliferation policy objectives consistent with the NRC's statutory mandate through cooperation with domestic and international partners.
6. Ensure material control and accounting for special nuclear materials.

Objective 2. Ensure protection of classified and Controlled Unclassified Information ¹.

Security Goal Strategy:

1. Ensure that programs for the handling and control of classified and Controlled Unclassified Information are effectively implemented at the NRC and at licensee facilities.

When determining whether one or both of the strategic goals applies, consider how the scope of the rulemaking would support the goal and the associated strategies. The value selected must remain within the range shown in Table 1. Further, when determining the contribution (high, medium, low, or none) of the rulemaking toward accomplishing the goals, consider the following guidelines:

1. High (select a value between 14-20)
 - a. Significant contributor toward one or more goals; OR
 - b. Moderate contributor toward one or more goals AND implements multiple strategies in one or more goals
2. Medium (select a value between 7-13)
 - a. Moderate contributor toward one goal AND implements one goal strategy
3. Low (select a value between 1-6)
 - a. Less substantial or indirect contributor toward one goal
4. None (select a value of 0)
 - a. Does not contribute toward any goal

Factor B

The NRC's [Strategic Plan for FY 2018-2022](#) states that it is the vision of the agency to demonstrate the principles of good regulation in implementing the NRC's safety and security mission. The principles also help the agency appropriately consider the interests of NRC stakeholders, including the public and licensees.

All rulemakings are developed and issued using the rulemaking process, which supports the principles of good regulation. When determining the priority of a rulemaking, consider only how the changes that the rulemaking would accomplish relate to the NRC's principles of good regulation, rather than the rulemaking process used to develop or issue the rule.

Compare the current regulations and applicable guidance to the proposed change. How does that proposed change to the regulation support Factor B and the NRC's principles of good regulation? For example, a rule that would modify how the public participates in the petition for

¹ Executive Order 13556 – Controlled Unclassified Information was issued on 11/04/2010; NARA regulations, 32 CFR Part 2002 for CIU became effective on 11/14/2016. NOTE: CUI includes items currently identified as SUNSI/SGI.

rulemaking process could enhance openness. Other rulemakings may focus on safety and security issues (addressed in Factor A) but not be focused on changes that directly support Factor B.

There are five principles of good regulation in the strategic plan.

1. Independence: Nothing but the highest possible standards of ethical performance and professionalism should influence regulation. However, independence does not imply isolation. All available facts and opinions must be sought openly from licensees and other interested members of the public. The many and possibly conflicting public interests involved must be considered. Final decisions must be based on objective, unbiased assessments of all information and must be documented with reasons explicitly stated.
 - a. Maintain or enhance the agency's independence as a regulator.
 - b. Example: if Congress passes a new statute which would change how the NRC conducts hearings or interacts with other governmental organizations. The rulemaking the NRC would conduct in response might relate to NRC independence as a regulator.
2. Openness: Nuclear regulation is the public's business, and it must be transacted publicly and candidly. The public must be informed about and have the opportunity to participate in the regulatory processes as required by law. Open channels of communication must be maintained with Congress, other government agencies, licensees, and the public, as well as with the international nuclear community.
 - a. Enhance the agency's ability to uphold its mission in an open and transparent way.
 - b. Example: If the NRC conducts a rulemaking which would change what information the NRC is required to publish in response to a petition.
3. Efficiency: The American taxpayer, the rate-paying consumer, and licensees are all entitled to the best possible management and administration of regulatory activities. The highest technical and managerial competence is required and must be a constant agency goal. The NRC must establish means to evaluate and continually upgrade its regulatory capabilities. Regulatory activities should be consistent with the degree of risk reduction they achieve. Where several effective alternatives are available, the option that minimizes the use of resources should be adopted. Regulatory decisions should be made without undue delay.
 - a. Provide the most cost efficient methods for implementing the requirements.
 - b. Example: If the NRC conducts a rulemaking which would result in selection of an effective regulatory alternative that minimizes the use of resources when compared to a(n) equally effective alternative(s).

4. Clarity: Regulations should be coherent, logical, and practical. There should be a clear nexus between regulations and agency goals and objectives, whether explicitly or implicitly stated. Agency positions should be readily understood and easily applied.
 - a. Improve the clarity of agency requirements to ensure full compliance when promulgated.
 - b. Example: If the NRC promulgates a rule which would clarify the agency's safety or security mission or requirements.
5. Reliability: Regulations should be based on the best available knowledge from research and operational experience. Systems interactions, technological uncertainties, and the diversity of licensees and regulatory activities must all be taken into account so that risks are maintained at an acceptably low level. Once established, regulation should be perceived to be reliable and not unjustifiably in a state of transition. Regulatory actions should always be fully consistent with written regulations and should be promptly, fairly, and decisively administered so as to lend stability to the nuclear operational and planning processes.
 - a. Ensure the reliability of the requirements with which licensees and applicants, etc. must be in compliance.
 - b. Example: If the NRC were to change backfitting or issue finality regulations.

When determining whether one or more of the principles applies, consider how the scope of the rulemaking would support the principle. The value selected must remain within the range shown in Table 1. Further, when determining the contribution (high, medium, low, or none) of the rulemaking toward supporting the principles, consider the following guidelines:

1. High (select a value between 7-10)
 - a. Significant contributor toward one or more principles; OR
 - b. Moderate contributor toward multiple principles
2. Medium (select a value between 4-6)
 - a. Moderate contributor toward one principle
3. Low (select a value between 1-3)
 - a. Less substantial or indirect contributor toward one principle
4. None (select a value of 0)
 - a. Does not contribute toward any principle

Factor C

Factor C is a weighting factor for a rule considered a priority for the agency to accomplish. The value assigned to the factor is based on two considerations. First, it can be used to account for a rulemaking initiated by a congressional mandate or other Federal requirements and thus requiring a greater agency focus (priority). Second, it can be used to adjust the relative priorities of rulemakings across the agency so that the integrated list of rulemakings appropriately reflects the agency's strategic priorities. For example, if "Rulemaking B" scored a higher prioritization value (from factors A and B) than "Rulemaking A" and senior management believes that "Rulemaking A" is a higher priority for the agency, senior management could

adjust this factor to correctly reflect the relative priorities of these rulemakings. The value of this factor is variable, which provides flexibility versus the fixed values assigned to Factors A and B in support of goals and objectives. However, the maximum value for this factor should not exceed Factor A (representing the rulemaking's support for the agency's strategic goals) and is thus scaled appropriately because the agency's safety and security mission should always be prioritized higher than any policy, political, or other consideration.

While there may be other considerations that could contribute toward Factor C, several suggested considerations are:

- Congressional mandate/priority/schedule
- Commission direction/priority (in an SRM or other)
- Conformance with external regulations
- Significant regulatory gap
- NRC licensing initiative/future regulatory benefit

Use the following guidance in selecting the appropriate value for Factor C when determining the relative governmental priority (high, medium, low, or none) of the rulemaking. The value could be adjusted by senior management (higher or lower) as appropriate based on agency strategic priorities, but must remain within the range shown in Table 1.

1. High (select a value between 7-10)
 - a. Significant contributor toward one or more considerations OR Congress or the Commission has provided specific direction and priority/schedule on the rulemaking
2. Medium (select a value between 3-6)
 - a. Moderate contributor toward one or more considerations OR Congress or the Commission has provided specific direction with no priority/schedule on the rulemaking
3. Low (select a value between 1-2)
 - a. Less substantial or indirect contributor toward one or more considerations AND Congress or the Commission has provided no specific direction and priority/schedule on the rulemaking
4. None (select a value of 0)
 - a. No contribution toward any consideration

Factor D

Factor D is a weighting factor for a rule considered to be of significant interest to industry, non-governmental organizations, or other members of the public. This factor could consider regulatory incentives such as eliminating the need for license amendments or reducing regulatory burden. This factor could also reflect significant interest (positive or negative) in the rulemaking by members of the public, such as a rulemaking resulting from a petition for rulemaking that attracted heavy media coverage or a rulemaking that received significant participation by members of the public (e.g., public meetings to discuss the regulatory basis, public comments on the proposed rule). The value of this factor is variable, similar to that of Factor C. However, its value should not exceed the value selected for Factor C, which reflects strategic governmental and agency priorities.

While there may be other considerations that could contribute toward Factor D, several suggested considerations are:

- Regulatory burden reduction
- Resolution of a petition for rulemaking
- Significant public participation (rule text, comments)
- Significant public interest/media coverage

Furthermore, rulemakings that originate from areas of public interest (e.g., those that resolve petitions for rulemaking) may be contributors to considerations already addressed under other factors and may already score high or medium based on those considerations. Conversely, the NRC would be unlikely to undertake rulemaking based primarily on public interest on a subject that does not contribute to the considerations under the other factors. For this reason, the factor weighting for Factor D is relatively smaller than the other factors.

Use the following guidance in selecting the appropriate value for Factor D when determining the relative public priority (high, medium, low, or none) of the rulemaking. Keep in mind that the value must remain within the range shown in Table 1.

1. High (select a value between 4-5)
 - a. Significant contributor toward one or more considerations
2. Medium (select a value between 2-3)
 - a. Moderate contributor toward one or more considerations
3. Low (select a value between 1)
 - a. Less substantial or indirect contributor toward one or more considerations
4. None (select a value of 0)
 - a. No contribution toward any consideration

Prioritization Scoring and Grouping

The total prioritization score is calculated by summing the values for Factors A through D for each rulemaking. Rulemakings will then be grouped into categories of high, medium, and low based on their total scores as follows:

High: Score 31-45
Medium: Score 16-30
Low: Score 0-15

Table 1
Values for Factors A through D

Goal/Objective	Range
Factor A – Strategic Goals	
Safety, Security	0-20
Factor B – Principles of Good Regulation	
Independence, Openness, Efficiency, Clarity, Reliability, Excellence	0-10
Factor C – Internal	
Governmental (NRC, Congress, etc.) Priority	0-10
Factor D – External	
Public (Industry, non-governmental organization, etc.) Priority	0-5

Total Prioritization Score = Factor A + Factor B + Factor C + Factor D