

October 19, 1998

MEMORANDUM TO: L. Joseph Callan
Executive Director for Operations

Karen D. Cyr
General Counsel

FROM: John C. Hoyle, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - SECY-98-168 - PROPOSED
RULEMAKING ACTIVITY PLAN

The Commission has approved the Rulemaking Activity Plan (RAP) subject to the comments provided below.

1. In NMSS-C5-30 (Extremity Dosimetry on page CV-6), under the section Recommendation to Proceed, the staff notes that the recommendation to terminate the rulemaking was sent to the Commission for approval. This should be corrected to note that the memorandum was sent to the Commission for information and there was no request for Commission approval.
2. In Appendix B, under "Category IVB and V - On Hold/Terminated," in the first bullet, 'Part 35' should be corrected to 'Part 36.'
3. In approving the RAP, the Commission does not express a view on NMSS-C5-38 (Storage of Greater Than Class C Waste on page CV-11) or NMSS-C4A-17 (Portland General Electric Petition). The staff has provided the Commission separate analyses and recommendations on these rulemakings.
4. With regard to NRR-C4A-14 (NEI petition for rulemaking on QA programs on page CIVA-1), the staff should act soon on this petition.
5. Commission approval of NMSS-C3MP-26 (Compatibility with IAEA Transportation Standards on pages CIII-9 and CIII-10) is based solely on the need to conform NRC requirements to IAEA transportation standards. The staff should work with DOT and IAEA and attend upcoming IAEA meetings for the purposes of revising the standards-setting process and specifically the current surface contamination standard of 4 Bq/cm² for transportation packages to make it more risk-informed.
6. With regard to termination of NMSS-C5-11 (Safe Concentration for Possession of SNM in Contaminated Soil on pages CV-2 and CV-3), the staff should assure that the report is consistent with the SRM for SECY-98-108.

7. Due to the increasing number of permanently shutdown plants, NRR-C1MP-23 (Emergency Planning Requirements for Permanently Shutdown Nuclear Reactors on pages CI-21 and CI-22) should be moved to the Higher Priority category.

In some cases; such as RES-C4A-15 and RES-C4A-27 (Potassium Iodide stockpiling petitions), NMSS-C2HP-04 (Recycle/Reuse Rule), NRR-C1HP-39 (Performance-Oriented Requirements for Fire Protection), and the write-up on the Part 35 rulemaking on page 4 of the paper; the information in the RAP is outdated or has been overtaken by events. The RAP should be updated as necessary.

In some cases, such as NMSS-C1LP-05 (Minor Administrative Changes) and NMSS-C3HP-20 (Options for Radiography), the information is not sufficiently detailed to explain apparent ten and twelve month lapses in progress.

In addition, the "Summary of Changes to the Rulemaking Activity Plan Since Last Plan Update" would be more helpful if it were to include a heading that would capture changes of staff position other than those involving decisions to add an activity to a category, publish a rule for comment, or put on hold or terminate an activity. For example, nothing in the Summary alerted readers to the staff's change in position on NRR-C4A-14, NEI's 1995 petition for rulemaking on QA programs.

In several instances (such as NMSS-C5-37, NMSS-C5-38, and NRR-C4A-14), the Commission required more detail on the basis for recommendations, and to allow the Commission to give early policy direction. Either more detail needs to be included in the RAP or some other mechanism needs to be identified to get early policy direction on rulemaking petitions. In addition, the staff should ensure that the RAP independently provides clear statements to allow the Commission and others to understand the reasoning for the staff's intended actions with each rulemaking without the need for supplemental information.

Burden reduction rulemaking needs to be a higher priority in rulemaking activities. In the April 15, 1997, SRM on DSI 12, Risk-Informed, Performance-Based Regulation (COMSECY-96-061), the Commission directed the staff to "build[] on the Regulatory Review Group's results ... with a more focused assessment of those regulations which are amenable to a risk-informed, performance-based or a risk-informed less prescriptive approach." The Commission said further that, "[t]o minimize use of resources in any fresh look at the RRG results, such a review should be simply incorporated into the semiannual updates of the Commission's Rulemaking Activity Plan." Appendix C to the draft RAP, which is the staff's response to this direction, appears to be no more than a listing of existing rulemaking activity that could be called risk-informed, performance-based, together with a bare indication of a few other areas that are amenable to such rulemaking activity. The Appendix gives no indication that the staff has made any efforts to "build on the RRG's results with a more focused assessment," or take a "fresh look at the RRG results." The next RAP should reflect such efforts.

Resources should be identified in the next version of the RAP and budgeted by reprogramming for simplified procedures for licensing the radioactive portion of waste on RCRA facilities in parallel with EPA's rulemaking on mixed waste. The staff should provide its recommendation to the Commission for how to proceed with the simplification of procedures for licensing the radioactive portion of waste in RCRA facilities before responding to any request by EPA for

such action.

cc: Chairman Jackson
Commissioner Diaz
Commissioner McGaffigan
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