GTP-RULE COVER/6

AUG 12 1988

MEMORANDUM FOR: Robert E. Browning, Director
Division of High-Level Waste Management

FROM: Joseph O. Bunting, Jr., Chief
High-Level Systems Engineering and
Evaluation Branch

SUBJECT: TRANSMITTAL OF STAFF PAPER ON THE DEVELOPMENT OF A TECHNICAL POSITION INTO A RULEMAKING

Pursuant to your request, Ken Kalman of my staff has prepared the enclosed paper on the development of a technical position into a rulemaking. A previous draft of this paper was provided to HLTR, HLOB, RES and OGC for review and comment. Their comments were incorporated into the enclosed paper. This paper presents various scenarios for the technical position-to-rulemaking process. Most important, it also demonstrates that generally, there is a small difference in time and resource requirements between the development of a technical position and the development of a rule. This small difference does not justify development of a non-binding technical position when an issue could be settled with the force of law.

Although rulemaking does not totally eliminate the possibility of subsequent contentions, the fact that rulemakings are backed by the force of law gives us a higher level of confidence than would a technical position or other guidance document that an issue has been resolved. Other things being equal, in view of the small difference in time and resources, it would therefore seem to be more efficient to use rulemaking as the chief means of resolving significant outstanding regulatory uncertainties prior to the licensing hearing.

At present, nine regulatory uncertainties have been identified as candidates for rulemaking. Under our program architecture, a more comprehensive review is currently underway which may identify additional regulatory uncertainties which may be of sufficient significance to add as candidates for rulemaking. Our efforts to develop factors for identifying and prioritizing candidate uncertainties for rulemaking suggest that there will be a considerable number of such candidate uncertainties. It is also apparent that we will have to go to rulemaking on each of the regulatory uncertainties before we can even consider going to rulemaking on the associated technical uncertainties. If we were to take no action in this area, we will be forced to accept the onus of delaying the DOE program because of unresolved safety issues, even if we allow for slippages in DOE's schedule.

There are several possible NRC responses to the lack of time for the rulemaking efforts that currently appear to be required to meet the NWPA construction authorization decision deadline:

Approach A

Under this approach, all candidate issues that have been identified through the screening process must be resolved by rulemaking to assure that there will not be any significant problems at the licensing hearing. There are several possible responses:

1. Accept time limitations and seek additional resources to meet them;

2. Under Section 114(e)(2) of the Nuclear Waste Policy Act, submit a written report to the Secretary (DOE) and Congress explaining the reason for our failure or expected failure to meet the deadline in the project decision schedule.

3. Make it clear to all concerned that NRC will be unable to meet the NWPA timetable for a repository licensing decision without significant additional time and resources to complete the rulemakings needed to reduce the issues for adjudication at the hearing to a manageable number. (This assumes that we can identify an optimum number of issues for rulemaking and credibly estimate the additional time and resources required.)

4. Seek alternative methods of establishing regulatory requirements with the force of law;

    a. Promulgating interim final or immediately effective rules pending subsequent public comment.

    b. Rulemaking by adjudication -- see A Guide to Federal Agency Rulemaking, Administrative Conference of the United States (ACUS), pp. 72-83.)

    c. Using negotiated rulemaking to develop a proposed rule, or at least to develop a consensus that can be used by the agency to draft a proposed rule. For purposes of negotiation, it may be of greater cost/benefit to group related issues together. This option would have to be examined on a case-by-case basis.

Approach B

Although A is the desired approach, limits on our time and resources may make it impossible to go to rulemaking on all of the candidate issues. If we can not live with the risk that an issue we could not resolve by rule might appear on the hearing agenda, we should consider pursuing alternative methods of dispute resolution prior to licensing. The objective here would be to identify dispute resolution methods, such as mediated consensus-building, that could be used for some issues as a complement or alternative to conventional guidance development efforts to achieve a lower level of risk (if possible at lower

cost) that the issues would significantly affect the licensing proceeding. Thus, in addition to the alternatives presented under Approach A, under Approach B we would also pursue alternatives designed to enable NRC to:

1. Forego rulemaking, at reduced risk (compared to conventional non-rulemaking approaches to pre-licensing resolution of issues) that the issues on which consensus is reached would be resurrected for reconsideration during the licensing proceeding; and/or

2. Expedite rulemaking, if desired, based on the consensus achieved among the interested parties to the dispute.

For the purposes of consensus building, it may be of greater cost-benefit to group related issues together and subject them to negotiations with the affected parties. The decision to use this alternative would have to addressed on a case-by-case basis. There is also the possibility that some combination of the above alternatives would enable us to fulfil our mission.

We have already had several meetings with the other branches, OGC, and RES in regard to identifying and establishing priorities for resolving uncertainties. I would like to circulate this paper to add to our discussion. Please forward your comments to me or Mr. Kalman as early as possible.

Original Signed by R. MacDougall for

Joseph O. Bunting, Jr., Chief
Division of Systems Engineering
and Evaluation Branch

Enclosure: As stated.

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EXECUTIVE SUMMARY

DEVELOPMENT OF A TECHNICAL POSITION
INTO A RULEMAKING

At the request of Robert E. Browning, Director, HLWM, HLSE staff has prepared this paper analyzing the schedule impacts in developing a Technical Position (TP) into a rulemaking. In particular, the staff was also asked to provide an estimate of the time needed to convert the draft generic technical position entitled "Guidance for Determination of Anticipated Processes and Events and Unanticipated Processes and Events" into a rulemaking.

The analysis presented in Part I of this paper is based on the assumptions in the Standard Planning Factors for rulemaking as directed by the EDO, and the Generic Technical Position milestones developed within HLWM.

Comparisons between these two documents were made to establish timeframes for several possible scenarios under which TPs and rulemakings may be developed. However, experience has shown that situations frequently arise which affect the staff's ability to work within these schedules. For this reason, a comparison has also been performed between the planned and actual times required to develop a TP. This comparison is presented in Part II if this paper. These comparisons have been utilized in Part III in developing an estimate of the time needed to develop the Processes and Events TP into a rulemaking. The conclusions arrived at through this exercise are provided in Part IV.

The analyses and determinations made in this paper lead to the following conclusions:

1. Based on the standard planning factors for rulemaking and the standard milestones for TPs, it is apparent that both should take approximately the same amount of time to complete. The principal program management trade-off is in the cost of the additional resources needed for rulemaking for the benefit of greater authoritativeness and enforceability. Rulemaking does not totally eliminate the possibility of subsequent contest. However, the fact that rulemakings are backed by law gives us a higher level of confidence that issues have been resolved than does the issuance of guidance such as technical positions. It would therefore seem to be more efficient to use rulemaking as the chief means of resolving outstanding issues prior to the licensing hearing.

2. If authoritativeness and timeliness are the principal priorities, a comparison solely of planning schedules indicates rulemaking is preferable. Rulemaking provides the necessary level of authoritativeness without any apparent loss of timeliness when compared to the GTP process.

3. In actual practice, neither TP's or rulemakings are likely to meet the standard planning schedules. Rulemakings are likely to take longer than TP's to develop because they involve more steps and may involve more interested parties. There is also the possibility of subsequent litigation pushing back the date at which the requirements of a rulemaking may be implemented.

4. Although there are clear theoretical advantages in deciding to pursue rulemaking earlier rather than later in the TP development process, in practice, there may be cases where management may want to pursue both sequentially. This is most likely where the probability of new information or changes in relevant circumstances makes it desirable to test the validity of the TP first, and codify the consensus of the technical community later in a rule.

5. It is possible to complete a rulemaking in as little as six months, provided that management and concurring offices are all working to move the rulemaking as quickly as possible, a shortened formal comment period can be justified, and little time is needed for resolving comments.

6. The Processes and Events Technical Position could be completed as a TP in approximately 34 - 40 weeks or it could be completed as a rulemaking in 90 - 94 weeks. The application of additional resources could complete a rulemaking in as little as 28 weeks. Comments from HLOB and OGC on a previous draft of this paper expressed the belief that 90 - 94 weeks was excessively long for completing the rulemaking.

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*It should be noted that as a result of the Nuclear Waste Policy Amendments Act (NWPAA) which narrowed the focus of the high-level waste repository program to one site, the term Generic Technical Position (GTP) is no longer used. Instead, these documents are now referred to as Technical Positions (TPs). In this paper, the two terms may be used interchangeably. The term GTP was used prior to the NWPAA.

I. Standard Milestones for Rulemakings and Generic Technical Positions

The determinations here are based on the EDO's guidance for a two-year rulemaking and a combination of projections for GTP schedules developed by the Repository Projects Branch (RPB, now HLOB).

The Standard Planning Factors, dated July 19, 1985 (Attachment A) established milestones for moving a rulemaking from its inception to its final action date within the two-year period as directed by the EDO. The assumptions and determinations on rulemaking in this paper are based on the EDO milestone schedule without modification.

In an October 9, 1986 memorandum, RPB set forth a list of standard milestones for preparing Generic Technical Positions (GTPs) as part of its effort to implement its Five Year Plan (Attachment B). In the past, DOE has taken issue with our Branch Technical Positions (BTPs) contending that the BTP's have neither the backing of an issuing office nor have they been subjected to peer review. The milestones for the preparation of GTP's include Office concurrence and peer review. For the most part, they are subjected to approximately the same scrutiny as the Regulatory Guides that DOE does recognize and should therefore have the same standing. Additional efforts in RPB focused on the development of a schedule for the GTP standard milestones. Although there may be some difference in wording between the milestones and the schedule, they are equivalent. The time estimates associated with the GTP milestone schedule (Attachment C), as presented in this paper, were developed in coordination with HLOB staff.

Attachment D provides timelines for both the GTP (top line) and rulemaking schedules (bottom line) based upon the above cited documentation. For simplification, only the critical milestones are shown on these timelines.

A. Generic Technical Position Process

In essence, there are six major periods in the GTP process as described in Attachment B: Development of the Draft Position; Publication of the Federal Register Notice; Resolution of Comments; Development of the Final Draft; Issuance of the final GTP; and Follow-up. These periods are described below.

Weeks 0-48 Development of the Draft Position

During this period, there is an option of establishing a task group to determine the scope of the GTP, identify peer review groups from outside of the universe that will be affected by the GTP (e.g. American Nuclear Society, American Society of Chemical Engineers), and assuring that the products at significant intermediate points

will be subjected to review and comment from the appropriate NRC staff organizational units. This optional action should be completed within the first two weeks.

Whether a task group is established or not, the Branch Chiefs are brought into agreement on the scope of the GTP within the first two weeks. Subsequently, DOE, States, Tribes, and peer review groups are notified of the Branch's intent to develop a GTP. The draft position is developed for RES and ACRS review, and concurrence by HLWM, and OGC. Inter-office staff consultations are held to resolve comments and the draft is prepared with Office concurrence for public comment.

Weeks 48-52 Publication of Federal Register Notice

Notice of the availability of the draft GTP is published in the Federal Register for those who may wish to review the draft and provide their comments. As a courtesy, and as a means for assuring their cognizance during this time period, copies of the draft GTP are often sent to interested groups (e.g. DOE, States, Tribes, the technical community, and industry.)

Weeks 52-80 Resolution of Comments

During this period, comments are received and efforts are made toward comment resolution. This may entail meetings with DOE, States, and Tribes. (So long as the Yucca Mountain site remains the only site to be characterized under the Nuclear Waste Policy Amendments Act, these meetings would involve DOE, the State of Nevada, adjacent states, affected units of local governments, and affected Indian Tribes. This understanding also applies where "States and Tribes" are referred to elsewhere in this paper.) A comment response document is prepared to address the adequacy of comment resolution and the draft GTP is revised accordingly.

Weeks 80-96 Development of the Final Draft

During this period, about twelve weeks are consumed in the actual preparation of the final draft and about four weeks are then consumed in obtaining concurrences from HLWM and other affected NMSS Divisions, NMSS, OGC, and RES.

Weeks 96-100 Issuance of the final GTP

The issuance of the final GTP is generally noted in the Federal Register and a contact is listed to obtain copies of the GTP.

Weeks 100-? Follow-up

Pending comments received on the GTP and lessons learned in its implementation, the staff may use this open-ended time period to scope out areas where further agreement might be reached with DOE, States, and Tribes. This period also provides a logical transition point for the GTP-to-rulemaking continuum. For example, the staff may use this time to determine whether a methodology or procedure established in the GTP is ripe for rulemaking.

B. Rulemaking Process

Inasmuch as the EDO's two-year schedule for rulemaking is fairly well known throughout the NRC and is described in detail in the Standard Planning Factors (Attachment A), this paper will not go into all of the details. For the purposes of this paper, the rulemaking process can be described in terms of the four specific periods described below.

Weeks -16-0 Obtain EDO Approval

During this period, staff efforts are directed toward securing the EDO's approval to pursue rulemaking. The staff prepares a package that defines the problem and the need for the rulemaking, examines the alternatives to rulemaking, and describes the implications for NRC and the affected parties. If the EDO gives approval to proceed, the two-year clock for rulemaking activities is started. Occasionally, the EDO will direct staff to develop its thinking further and resubmit its proposal for rulemaking, or the EDO may disapprove the rulemaking action altogether. In this situation, the staff may consider issuing guidance as an alternative to rulemaking.

Weeks 0-24 Advance Notice of Proposed Rulemaking (ANPRM)

The use of an ANPRM is an optional activity that the staff may use to refine its thinking by subjecting the expected rulemaking issues to public review and comment. Comments received are then taken into consideration in the development of the proposed rule.

Weeks 24-72 Proposed Rule

Based upon its background work and any comments that may have been received on the ANPRM, the staff begins drafting the proposed rule.

The draft proposed rule is subjected to review and approval from the ACRS, CRGR, EDO, and the Commission before it is published in the Federal Register. Subsequent to the issuance of the EDO's two-year schedule, the Commission created a separate Advisory Committee on Nuclear Waste (ACNW). Among other things, the ACNW would be responsible for reviewing HLWM rulemakings. The eight-week public comment period begins around week 64. The length of the comment period may be extended depending on the importance or complexity of the issues. This additional time is made up by compressing the time allotted for subsequent activities in the rulemaking.

Weeks 72-100 Final Rule

Based upon comments received on the proposed rule, the staff uses this period to draft the final rule and obtain the necessary concurrences from the EDO and other appropriate offices, and the approval of the Commission. Concurrence from the ACNW and CRGR may also be in order. Frequently, revisions are necessary for securing these concurrences. After these concurrences have been secured, the Final Rule is published in the Federal Register.

C. Analysis of the GTP-to-Rulemaking Continuum

Assuming that the initial decision has been made for the development of only a GTP, there are three periods in the 100-week GTP process at which the decision to move to rulemaking may be made. This is graphically illustrated in Attachment D.

The first period is during the first 48 weeks in which the draft position is being developed. If the decision is made to pursue rulemaking at any time during this period, then the total time spent on this activity would be the sum of: 1) the time spent on the GTP to date; 2) two weeks to get NMSS approval on making the change to rulemaking; 3) 16 weeks to secure EDO approval to proceed with rulemaking; and 4) the 100 weeks needed to complete the rulemaking (assuming that an ANPRM will be published). For example, if the decision to change to rulemaking was made during week 20 of the GTP process, the total time spent would be as follows:

20	weeks spent on the GTP
02	weeks for NMSS approval
16	weeks for EDO approval*(See footnote at end of Section I.C)
100	weeks for rulemaking (including 24 weeks for ANPRM)
TOTAL 138	weeks

Clearly, if there is no need to pursue both a GTP and a rulemaking on the same subject, and rulemaking is deemed essential to resolving the issue, saves time and resources if the decision to pursue rulemaking can be made early. In this particular example, the 116-week schedule for rulemaking has been increased by 22 weeks. (See footnote). As noted below, however, there may be valid reasons for developing a GTP first, and then a rule.

Once the draft position is published in the Federal Register for comment (week 48), the staff will be tied to spending weeks 48-80 on comment resolution. As a result of the comments received, however, at weeks 80-92 the staff may again consider the possibility of pursuing rulemaking. This is the second period for making this transition. As in the previous situation, the staff would have to go to the beginning of the rulemaking process. However, in this period, the issues will most likely be sufficiently well-developed to make the ANPRM option unnecessary, and 24 weeks can be cut from the rulemaking process. If the decision was made to pursue rulemaking at week 80, for example, then the total time spent would be as follows:

80	weeks spent on the GTP
02	weeks for NMSS approval
16	weeks for EDO approval* (See footnote at end of Section I.C)
76	weeks for rulemaking (no ANPRM)
TOTAL 174	weeks

In this scenario the 116-week schedule for rulemaking has been increased by about 58 weeks. As noted above, this delay could have been avoided by an early determination that no GTP is needed and rulemaking is desirable and possible. It is also possible that in the course of developing the GTP, other issues related to the GTP may have surfaced by this point that are suitable for rulemaking. While the staff continues to move the GTP toward issuance, it may elect to begin working on the resolution of these related issues through rulemaking as a separate action. For example, in the recent development of a TP on quality assurance, it became evident that language was needed in 10 CFR Part 60 on design basis accidents. Nevertheless, the TP was carried through to completion, and the possibility of undertaking a rulemaking on design basis accidents is currently under consideration.

The third and final period in which a GTP may be moved toward rulemaking is after the GTP has been issued. During GTP development, the staff has been afforded an opportunity to strengthen its grasp of the issues through public and peer review. Evaluation at this point should enable staff to determine whether it is necessary or prudent to use the GTP as a basis for future rulemaking. Before proceeding with rulemaking, the staff may want to test the continuing validity of the GTP over a period of years during which time new information, pertinent new issues, new investigative techniques, or other

changes in circumstances may come to light. If "field testing" confirms the validity of the GTP and no new issues or techniques have developed during this period, and rulemaking is still considered worthwhile, it is most likely that an ANPRM will not be necessary in developing the rulemaking. If this is the case, the total time spent on these two activities would be as follows:

100 weeks	spent on the GTP
02 weeks	for NMSS approval
16 weeks	for EDO approval*(See footnote at end of Section I.C)
76 weeks	for rulemaking (no ANPRM)
TOTAL 194 weeks	

In a situation where it has been deemed appropriate to "field test" a GTP prior to rulemaking, there would be a savings of 22 weeks under the total time for developing a GTP (100 weeks) and a rule with an ANPRM (116 weeks) (216 week total) independent of each other.

It should also be noted that if the staff's initial intent was to pursue rulemaking but the EDO denied approval to proceed, some of the work spent in trying to secure EDO approval could be utilized in developing a GTP. The 16 weeks spent trying to secure EDO approval could save approximately four weeks in the GTP process. This savings would be found in expediting such GTP milestones as getting the Branch chiefs into agreement, development of the draft position, and securing Office concurrences.

12 to 16 weeks	for EDO approval (denied)
96 weeks	for GTP
TOTAL 108 to 112 weeks	

In this situation, the 100 week GTP process has only been increased by 8 to 12 weeks.

Another possible scenario in the GTP-to-rulemaking continuum would be to group several related technical positions together for development into one overall rulemaking. For example, all of the technical positions on siting criteria could be grouped together and then developed into one overall rulemaking. This approach could produce considerable savings in resources spent on rulemaking activities.

Instead of developing five separate technical positions into five separate rulemakings, for example, they could be grouped into one overall rulemaking, thereby saving the resources that would have been spent on the other four rulemakings. It is likely that this approach may require greater resource intensity on the overall rulemaking. Nevertheless, the savings would still be considerable. An "economy of scale" would be achieved proportional to the number of technical positions that can be developed into one overall rulemaking.

This overall rulemaking approach may also be conducive to negotiated rulemaking. In negotiated rulemaking, the agency meets with the parties who would be affected by the rulemaking to develop a proposed rule. The Administrative Conference of the United States (Recommendation 82-4) recommends the use of negotiated rulemaking when "the issues to be raised in the proceeding are mature and ripe for decision", and there are "a number of diverse issues that the participants can rank according to their own priorities and on which they might reach agreement by attempting to optimize the return to all participants." Clearly, this is the case when a number of technical positions are to be developed into an overall rule.

Regardless of how the overall rule is developed, for timeliness, it is imperative for management to make an early determination of which technical positions are to be developed into rules. The overall rulemaking approach may be hampered if one of the technical positions to be incorporated into the overall rule has not ripened sufficiently. Therefore, the development of the technical positions designated for rulemaking should be scheduled so as not to delay the development of the overall rule.

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* To the extent that some of the work performed during development of the GTP can be used to obtain EDO approval for a subsequent rulemaking, it is likely that approximately two weeks of staff activities can be saved from the 16 weeks scheduled to get EDO approval. Twelve of these sixteen weeks must be spent on interactions between NMSS and the EDO and would not be affected by NMSS staff work on the GTP.

II. Practicum - Time Requirements for Actual TP's and Rulemaking

A. Technical Positions

The previous discussion was based on idealized milestone schedules for Technical Positions and rulemaking. However, practical experience has shown that the milestone schedules can be difficult if not impossible to meet.

To date, the TP entitled "Items and Activities in the High-Level Waste Geologic Repository Program Subject to Quality Assurance Requirements (the Q-list) has gone through very much the the same process as RPB's standard milestones for preparing GTPs. This is because the Q-list and the standard milestones were undergoing development at approximately the same time, and lessons learned were shared. Interviews with other staff in HLOB indicate that many of them were not aware of the standard milestones or did not find the standard milestones to be appropriate for their technical positions. Consequently, these other TPs have not followed the standard procedures.

The Q-list GTP overran the standard GTP milestone schedule by approximately seven weeks. Much of the additional time was consumed in development of the draft position for concurrence by WM and OGC, and for RES and ACRS review. On the other hand, the public comment period for the Q-list was four weeks shorter than the standard GTP milestone schedule allowance of 12 weeks. To date there have been no comments received in regard to this comment period having been too short. Not surprisingly, the staff experience has been that topics that are new, controversial, complex, or that require significant research will need more time for developing draft positions. Experience with the Q-list GTP has also shown that additional time is needed during the resolution of public comments and in coordinating with ACRS.

The Q-list TP omitted the steps of providing formal notification to DOE, States, Tribes, and peers of the intent to develop the GTP and sending copies of the draft position to targeted groups. However these omissions did not result in any time savings on the schedule because they would have been concurrent activities under the standard GTP development process, and would not have been on the critical path. A side-by side comparison of the standard milestones and schedule for GTPs and the actual milestones and schedule of the Q-list TP are provided in Attachment E.

B. Rulemakings

According to RES, where rulemaking activities have been tracked, since the inception of the EDO's two-year schedule for rulemaking, approximately 53% of the 62 rulemakings have met the EDO's two-year schedule. Some of these

rulemakings were already underway when the EDO's schedule was implemented. There is no data available as to the status of rulemakings initiated since the EDO schedule came into effect. However, there appears to be some elasticity in this schedule if the Commission instructs staff to revise or add support for its recommendations. If the staff determines that the additional work required will exceed the allotted timeframe, the Office may request the EDO to offset the rulemaking schedule by an equal amount. Such is the case when contractual support is needed to perform this additional work. The two-year clock is stopped until the staff is able to resume its rulemaking activity. At that point, the staff resumes from where it left off. Although there is no precise data, OGC has noted that past rulemakings have taken anywhere from six months (Emergency Preparedness Rulemaking) to several years (Emergency Core Cooling System Rulemaking) to complete.

The possibility of completing a rulemaking in as little as six months is largely dependent on the level of staff resources dedicated to the project. Additional resources can be used formally, to work on the necessary supporting documentation such as Proposed NRC Resources and Schedule, NRC Regulatory Agenda Entry, Federal Register Notices, and the Environmental Impact Statement, to name a few. These supporting activities can all be performed concurrent with the direct work for the development of the rule. To the extent that these activities are not on the critical path, the time saved by applying additional resources will probably not be much more than several weeks.

Even more importantly, these resources can be applied informally to expedite review and concurrence of the formal documentation. These informal activities, which are not specifically listed in the Standard Planning Factors, include the provision of frequent briefings and advance drafts to management and concurring offices, and coordination with key personnel in the concurrence chain. Interaction with affected outside parties can also be used to justify a shortened formal comment period and to help reduce the number and contentiousness of comments received during that period.

There is no available data regarding the level of resources needed to effect such time savings. In view of the finite nature of resources, it is incumbent upon management to establish priorities for the development of rulemakings before deciding to apply additional resources.

III. Planning Estimates for Developing Processes and Events TP to Rulemaking

This section focuses on the possibility of developing the TP entitled "Guidance for Determination of Anticipated Processes and Events and Unanticipated Processes and Events" into a rulemaking. The availabilty of this TP was announced in the Federal Register on February 29, 1988, and copies were sent to those who requested it. The comment period closed on April 29, 1988, at

which point this TP was on week 64 of the Standard GTP Milestones Timeframe (Attachment C). It should be noted that although the Standard Milestones Timeframe allows 12 weeks for public comment, this GTP was out for only 8 weeks. It may therefore be possible that some potential commenters were unable to provide their comments on time, which may lead to some unresolved issues in the future. Regardless, this GTP is at the point where it is prudent to decide whether to continue efforts to issue it as a final TP or to develop it into a rulemaking.

This decision will have to be made in part on the comments received on the TP. The staff will also have to consider such factors as the need for rulemaking versus other alternatives, the possibility of new scientific or technical advances that may affect the continuing validity of the methodology in this TP, and the timeframe in which such guidance or rule is needed.

According to the standard schedules, the staff should be able to complete the TP in another 36 weeks. The experience on the Q-list TP showed that this could take as little as 34 or as much as 40 weeks if there is some difficulty in comment resolution. If the choice is made to convert to rulemaking, the staff would proceed on the following schedule:

	02 weeks for NMSS approval to switch to rulemaking
	16 weeks for EDO approval
	76 weeks for rulemaking (no ANPRM)
TOTAL	94 weeks to complete rulemaking

As mentioned previously, the 16-week schedule for EDO approval may be shortened by two weeks. Inasmuch as there has already been some discussion of the possibility of converting this TP to a rulemaking, it is possible that some parts of the rulemaking milestone schedule may be expedited to save several more weeks, in which case this rulemaking could be completed in anywhere from 90 to 94 weeks. It is also possible that applying additional resources as discussed in Section II B of this paper could reduce the time needed to develop the rule to as little as six months, provided that management and concurring offices are all working to move the rule as quickly as possible, the formal comment period was shortened, and no contentious comments arose during the comment period. In view of the finite nature of resources, it is important for management to establish priorities for rulemaking action before deciding to apply additional resources in this manner.

In this scenario the rulemaking could be completed on the following schedule:

	02 weeks for NMSS approval to switch to rulemaking
	26 weeks for rulemaking with additional resources
TOTAL	28 weeks to complete rulemaking

The options for guidance/rulemaking are summarized below.

Complete final TP ..... 34-40 weeks
Complete as Rulemaking ..... 90-94 weeks
Complete as Rulemaking
with additional resources.....28 weeks

In other words, it could take 50 to 60 weeks longer to convert from a GTP to a rulemaking at this point, rather than completing the GTP. The addition of resources could reduce the time to as little as 28 weeks.

IV. Conclusion

As previously noted, the purpose of this paper was to analyze the schedule impacts in developing a technical position into a rulemaking with particular focus on the draft GTP on "Processes and Events". An analysis was performed based on the EDO requirements for a two-year rulemaking and Standard Milestones for the development of a GTP. Because only 53% of the rulemakings have met the two-year schedule since its inception and there is little evidence of a systematic program-wide effort to follow the GTP schedule, this analysis is useful primarily as a theoretical goal against which actual performance can be assessed or more realistic estimates of actual performance can be made.

Nevertheless, the standard milestones for the GTP do have merit as an attempt to address many of the DOE's contentions regarding the authority of branch technical positions. For this reason, the use of these milestones should be further evaluated to see just what they do for raising the authority of the technical positions. They can also be evaluated to determine whether they can be more effectively used as a management tool for improving actual performance or whether they should be revised to reflect the practicalities associated with the development of most TPs.

Second, the analysis has identified specific periods for deciding whether it is prudent for changing from the technical position to rulemaking and the range of estimated schedule costs in making this change at each period. This analysis has shown the cost benefit of making the decision to change early. Third, this paper has identified the schedule options available in the further development of the "Processes and Events" GTP as a technical position or a rule.

The analyses and determinations made in this paper lead to the following conclusions:

1. Based on the standard planning factors for rulemaking and the standard milestones for TPs, it is apparent that both should take

approximately the same amount of time to complete. The principal program management trade-off is in the cost of the additional resources needed for rulemaking for the benefit of greater authoritativeness and enforceability. Rulemaking does not totally eliminate the possibility of subsequent contest. However, the fact that rulemakings are backed by law gives us a higher level of confidence that issues have been resolved than does the issuance of guidance such as technical positions. It would therefore seem to be more efficient to use rulemaking as the chief means of resolving outstanding issues prior to the licensing hearing.

2. If authoritativeness and timeliness are the principal priorities, a comparison solely of planning schedules indicates rulemaking is preferable. Rulemaking provides the necessary level of authoritativeness without any apparent loss of timeliness when compared to the GTP process.

3. In actual practice, neither TP's or rulemakings are likely to meet the standard planning schedules. Rulemakings are likely to take longer than TP's to develop because they involve more steps and may involve more interested parties. There is also the possibility of subsequent litigation pushing back the date at which the requirements of a rulemaking may be implemented.

4. Although there are clear theoretical advantages in deciding to pursue rulemaking earlier rather than later in the TP development process, in practice, there may be cases where management may want to pursue both sequentially. This is most likely where the probability of new information or changes in relevant circumstances makes it desirable to test the validity of the TP first, and codify the consensus of the technical community later in a rule.

5. It is possible to complete a rulemaking in as little as six months, provided that management and concurring offices are all working to move the rulemaking as quickly as possible, a shortened formal comment period can be justified, and little time is needed for resolving comments.

6. The Processes and Events Technical Position could be completed as a TP in approximately 34 - 40 weeks or it could be completed as a rulemaking in 90 - 94 weeks. The application of additional resources could complete a rulemaking in as little as 28 weeks. Comments from HLOB and OGC on a previous draft of this paper expressed the belief that 90 - 94 weeks was excessively long for completing the rulemaking.

The findings of this paper underscore the importance of another HLSE project regarding the development of a tool for deciding what is the most appropriate mechanism for resolving outstanding issues. This paper will identify the available mechanisms for imposing requirements and providing guidance, and discuss their relative strengths and weaknesses. Criteria will be provided for evaluating unresolved issues and helping to determine the most appropriate mechanism for achieving their resolution. The possibility of grouping related issues and using one mechanism for achieving their resolution will also be explored.

ATTACHMENTS

A. STANDARD PLANNING FACTORS (July 19, 1985)

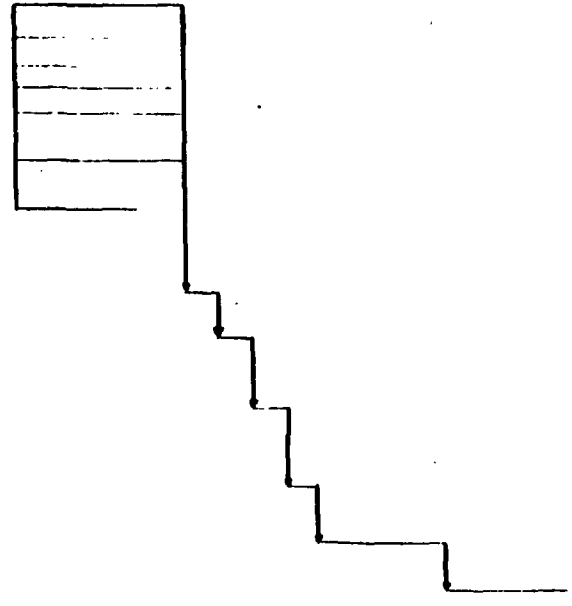
B. MILESTONES TO PREPARE GENERIC TECHNICAL POSITIONS

C. TIME ESTIMATES TO PREPARE GENERIC TECHNICAL POSITION MILESTONES

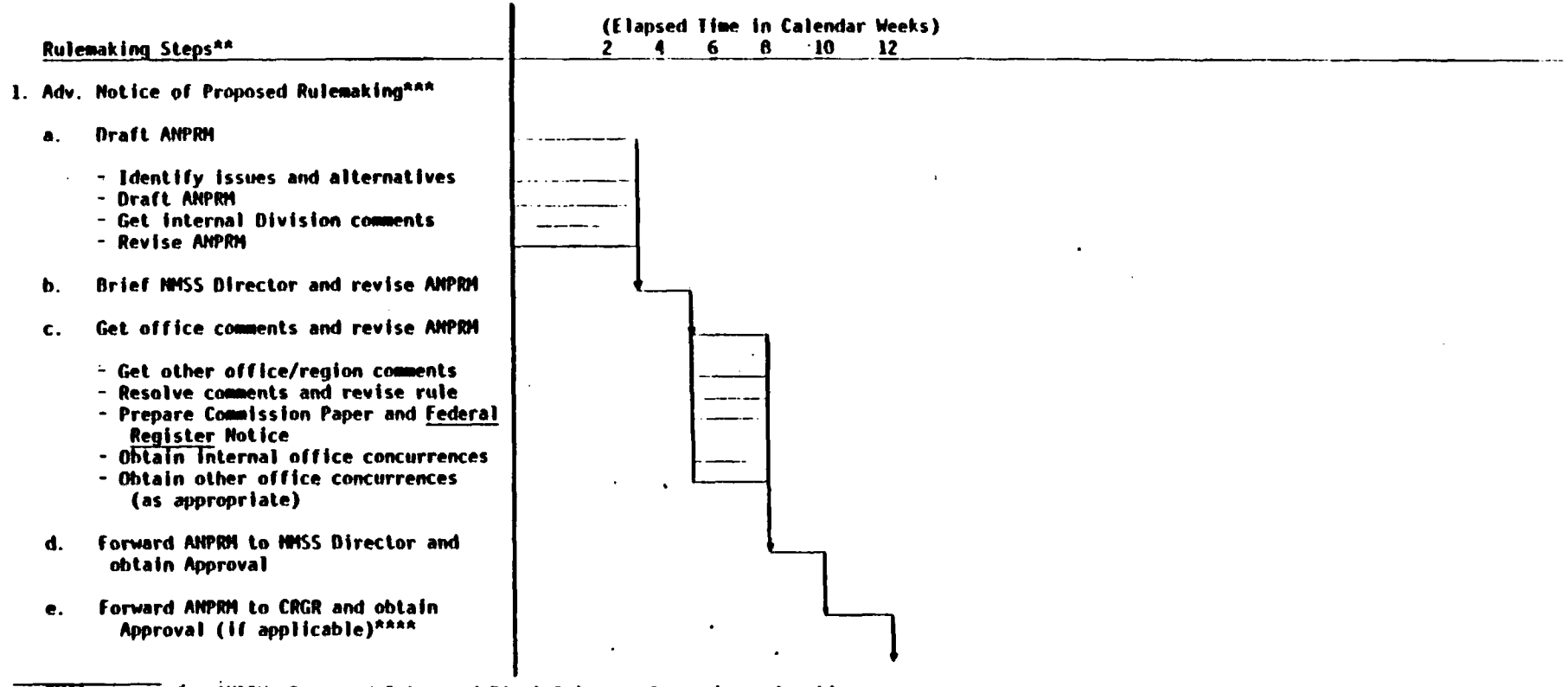
D. TIMELINES FPR GENERIC TECHNICAL POSITIONS AND RULEMAKINGS

E. COMPARISON BETWEEN GENERIC TECHNICAL POSITION AND Q-LIST MILESTONES AND SCHEDULES

STANDARD PLANNING FACTORS

Rulemaking Steps	(Time Remaining to EDO Approval in Calendar Weeks) 16 14 12 10 8 6 4 2 0
APPROVAL FOR RULEMAKING	
a. Preparation of Rulemaking Package - Div. to define issue/problem - Define necessity/urgency - Define possible alternatives - Define how rulemaking will address problem/issue - Define how public, industry, and NRC will be affected - Proposed NRC resources and schedule	
b. Obtain NMSS Director Approval	
c. Div. continue work on package for RES/EDO review/approval	
d. Div. forward package to NMSS Director with transmittal memorandum	
e. PPAS forward package to RES for review	
f. RES forward package to EDO for Approval	
g. Receive EDO Approval to Proceed	

STANDARD PLANNING FACTORS*



*Milestones for ANPRM, Proposed Rule, and Final Rule are for major rulemakings.

**In order to meet this overall schedule, each step must be completed within the limited time shown.

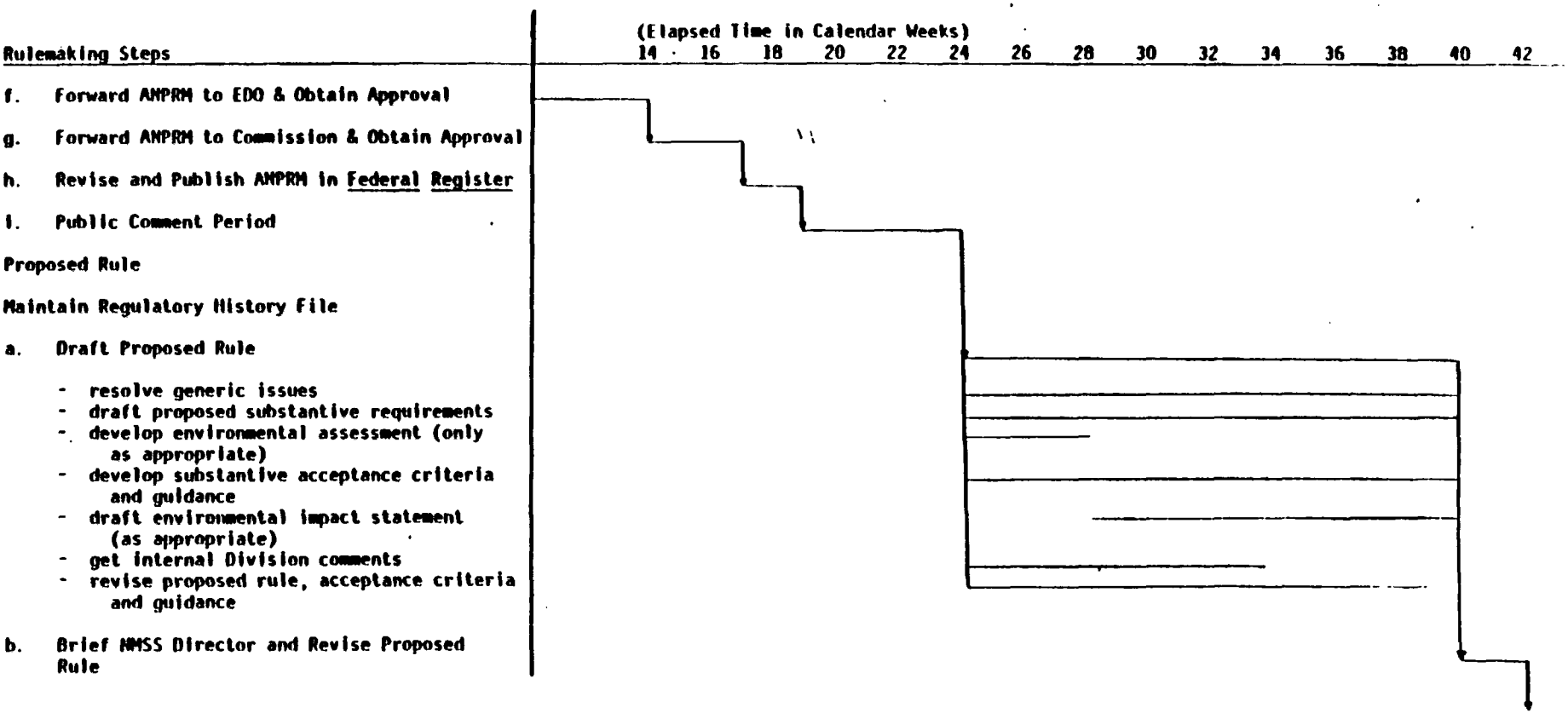
***ANPRMs are not a prerequisite for all proposed rulemakings. (See Code of Federal Regulations Handbook.)

****CRGR review is required for all reactor rulemakings.

1.5.3.2.3/LJ-B/85/07/10/0

85/07/19

STANDARD PLANNING FACTORS



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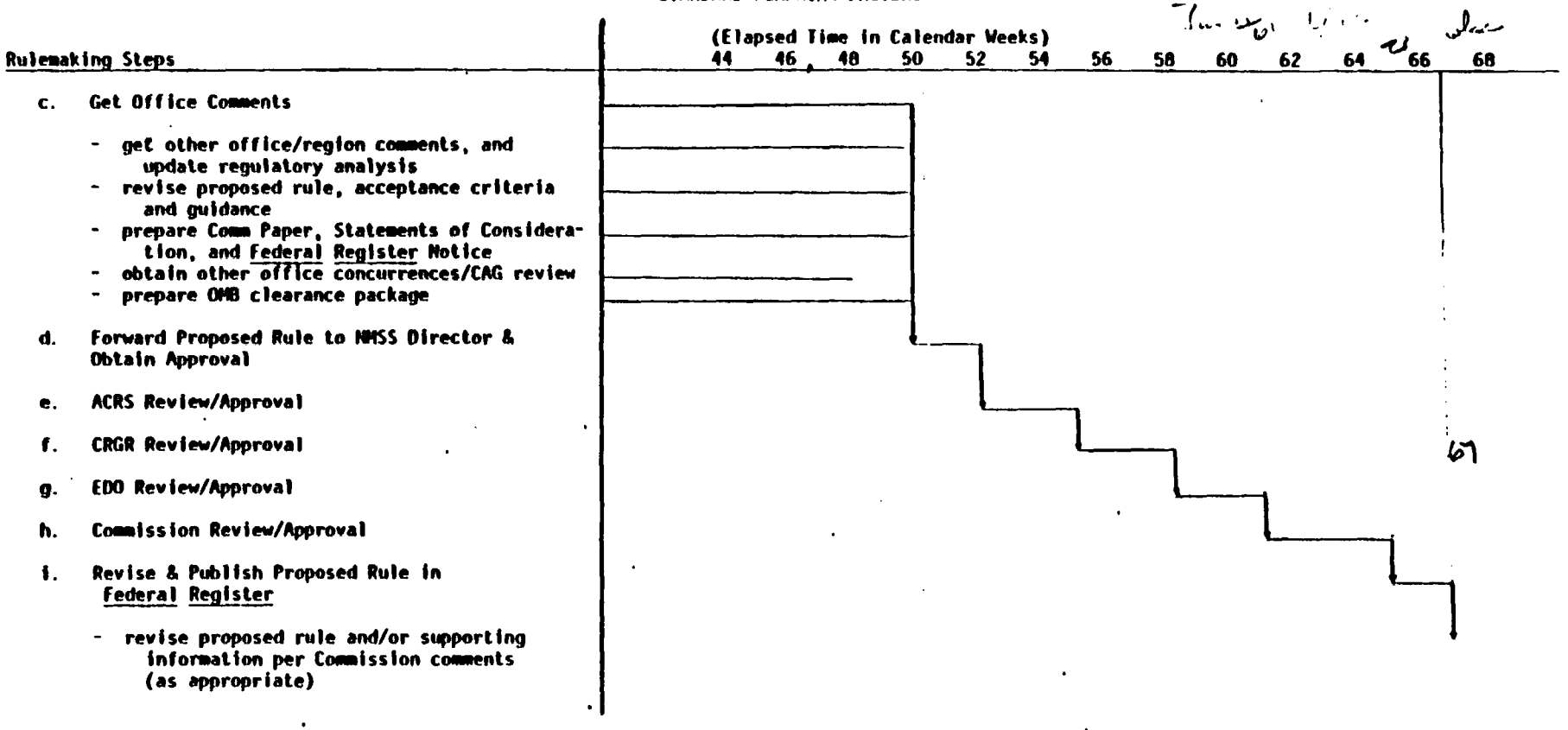

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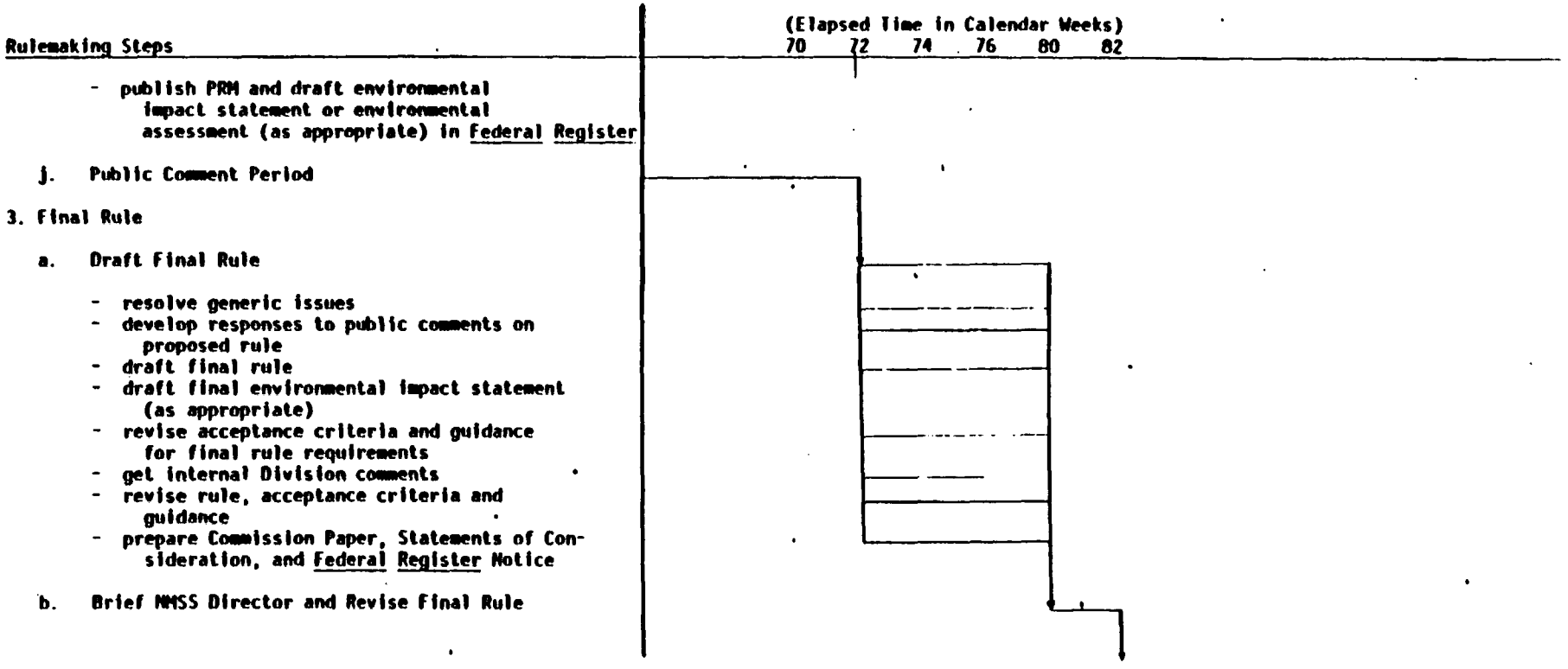
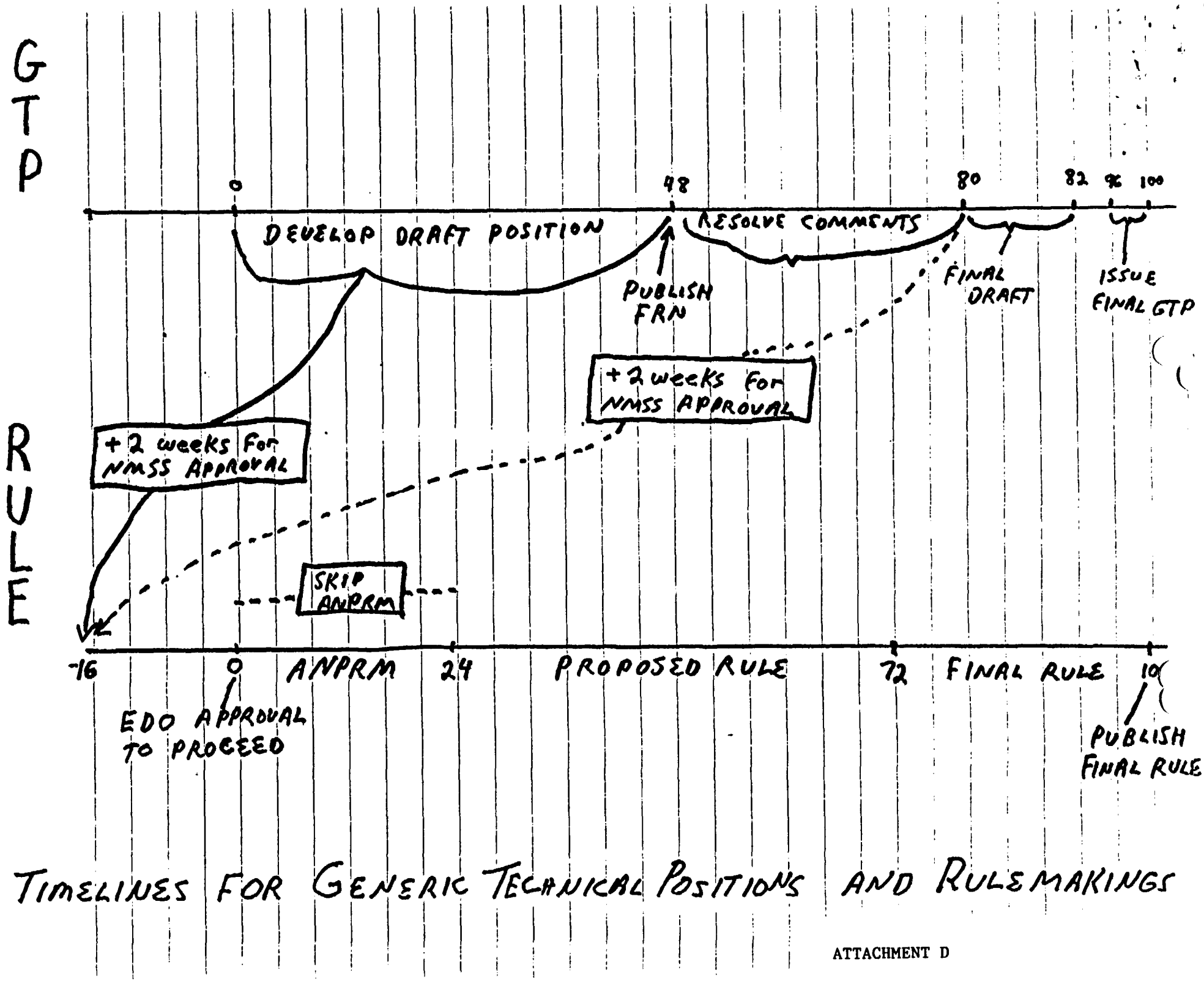


R.	Scope out areas where further agreement might be reached with DOE/States/Tribes based on future work (appropriate meetings can be held)	Indefinite
S.	Determine whether methodology established in GTP is ripe for rulemaking	Indefinite



TIMELINES FOR GENERIC TECHNICAL POSITIONS AND RULEMAKINGS

ATTACHMENT D

COMPARISON BETWEEN GENERIC TECHNICAL POSITIONS
AND Q-LIST MILESTONES AND SCHEDULES

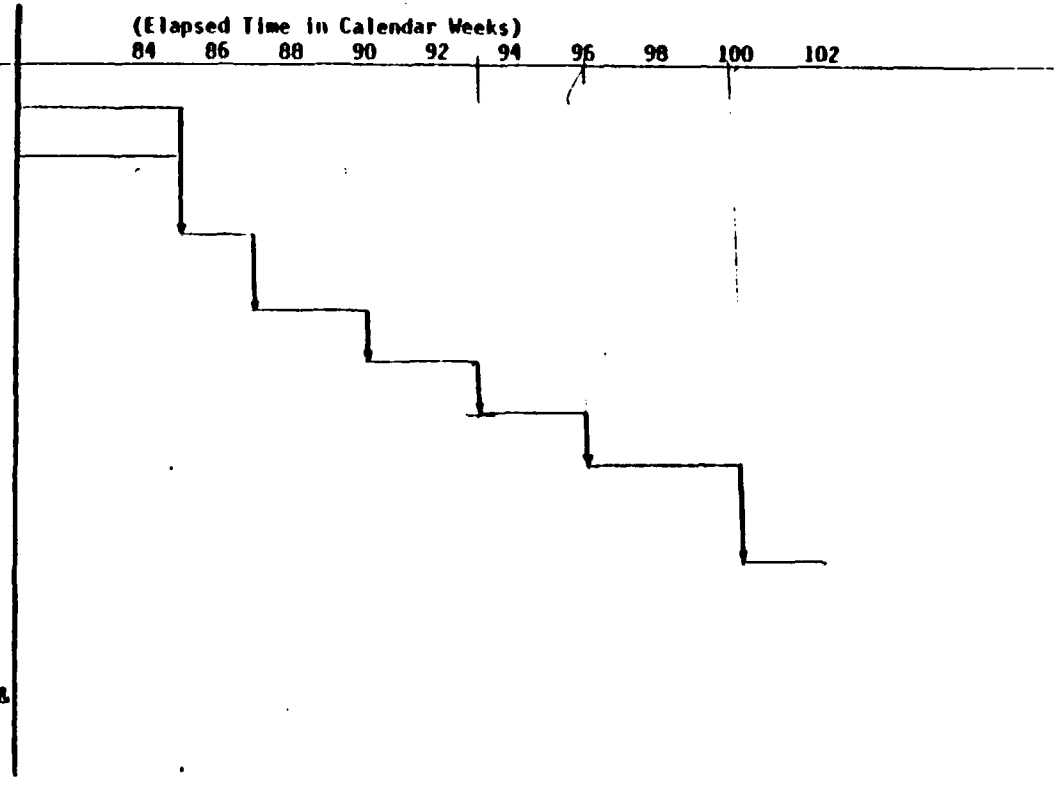
ACTIVITY	WEEK Q-LIST	WEEK GTP
A. Establish task group to: - determine scope - identify peer review groups (e.g., ANS, ASCHE, etc.) and determine timing and mechanisms for reviews - assure that products at significant intermediate points receive organizational unit concurrence	0 - 2	0 - 2
B. Brief WM branch chiefs to get agreement on scope	0 - 2	0 - 2
C. Notify DOE, States/Tribes of intent to develop position, proposed scope, and advise of opportunity to comment. Notify peer review groups of intent to develop position, proposed scope, and schedule for review	NOT DONE	0 - 2
D. Develop draft position for concurrence by WM and OGC, and for RES and ACRS review.	2 - 30 OGC & RES - Review and Comment Only No Concurrence Sought	2 - 12

ATTACHMENT E

		Q - LIST	GTP
E.	NRC review and comment (Resolve RES and ACRS comments)	30 - 35	12 - 24
F.	Internal meetings to resolve Office comments	35 - 47	24 - 36
G.	Revise draft position paper.	35 - 47	24 - 36
H.	Get Office concurrence.	47 - 59	36 - 48
I.	Issue Federal Register Notice	59 - 61	48 - 50
	Brief ACRS	59 - 61	--
J.	Send copy to targeted groups (ie DOE, States, Tribes, technical community and interest groups	DID NOT DO	50 - 52
K.	Public Comment Period (send reminder letter to DOE/States/Tribes prior to end of comment period	61 - 73	52 - 64
L.	Resolve comments	73 - 89 (16 vs 12)	64 - 76
	Meet with public to resolve comments	73 - 76	--
M.	Prepare comment response document (Meet with DOE/States/Tribes on adequacy of comment resolution)	73 - 89 (18 vs 12)	64 - 76

Brief ACRS (twice)		89 - 93	--
N.	Revise comment response document and GTP.	93 - 97	76 - 80
O.	Prepare final draft.	97 - 99	80 - 92 (2 vs 12)
P.	Get Office Concurrence	99 - 103	92 - 96
Q.	Issue Final GTP	103 - 107	96 - 100
R.	Scope out areas where further agreement might be reached with DOE/States/Tribes based on future work (appropriate meetings can be held)	Indefinite	
S.	Determine whether methodology established in GTP is ripe for rulemaking	Indefinite	

STANDARD PLANNING FACTORS



Rulemaking Steps

c. Get Office Comments

- obtain other office concurrences/CAG review
- revise OMB clearance package (if required)

d. Forward Final Rule to NMSS Director and Obtain Approval

e. ACRS Review/Approval

f. CRGR Review/Approval

g EDO Review/Approval

h. Commission Review/Approval

i. Publish Final Environmental Impact Statement

j. Revise & Publish Final Rule in Federal Register

- Revise rule and supporting information (as appropriate)
- publish Final Rule in Federal Register

Forward Completed Index of Regulatory History File to Rules & Procedures Branch, ADM (within 60 days after completion)

Milestones to Prepare Generic Technical Positions

E D

I Establish task group to:

- determine scope
- identify peer review groups (e.g., ANS, ASChe, etc.) and determine timing and mechanisms for reviews
- assure that products at significant intermediate points receive organizational unit concurrence

I Brief WM branch chiefs to get agreement on scope

I I Notify DOE, States/Tribes of intent to develop position,proposed scope, and advise of opportunity to comment

I Notify peer review groups of intent to develop position, proposed scope, and schedule for review

I Develop draft position for concurrence by WM and OGC, and for RES and ACRS review

I Resolve RES and ACRS comments and prepare draft for public comment

I I Issue Federal Register Notice and send copy to targeted groups. DOE, States, Tribes, technical community and interest groups

I Send reminder letter to DOE/States/Tribes prior to end of comment period

I Public comment period ends

I Resolve comments and prepare draft final for concurrence by WM, OGC and RES

I I Issue final position with office concurrence

I I Meet with DOE/States/Tribes on adequacy of comment resolution

ATTACHMENT B

I Scope out areas where further agreement might be reached with DOE/States/Tribes based on future work (appropriate meetings can be held)

I I Determine whether methodology established in GTP is ripe for rulemaking

Time Estimates to Prepare
Generic Technical Positions

ACTIVITY		WEEK
A.	Establish task group to: - determine scope - identify peer review groups (e.g., ANS, ASCHE, etc.) and determine timing and mechanisms for reviews - assure that products at significant intermediate points receive organizational unit concurrence	0 - 2
B.	Brief WM branch chiefs to get agreement on scope	0 - 2
C.	Notify DOE, States/Tribes of intent to develop position, proposed scope, and advise of opportunity to comment. Notify peer review groups of intent to develop position, proposed scope, and schedule for review	2 - 12
D.	Develop draft position for concurrence by WM and OGC, and for RES and ACRS review.	2 - 12
E.	NRC review and comment (Resolve RES and ACRS comments)	12 - 24

ATTACHMENT C

F.	Internal meetings to resolve Office comments	24 - 36
G.	Revise draft position paper.	24 - 36
H.	Get Office concurrence.	36 - 48
I.	Issue Federal Register Notice	48 - 50
J.	Send copy to targeted groups (ie DOE, States, Tribes, technical community and interest groups	50 - 52
K.	Public Comment Period (send reminder letter to DOE/States/Tribes prior to end of comment period	52 - 64
L.	Resolve comments	64 - 76
M.	Prepare comment response document (Meet with DOE/States/Tribes on adequacy of comment resolution)	64 - 76
N.	Revise comment response document and GTP.	76 - 80
O.	Prepare final draft.	80 - 92
P.	Get Office concurrence .	92 - 96
Q.	Issue final GTP	96 - 100