

April 7, 2006

MEMORANDUM TO: Commissioner Merrifield  
Commissioner Jaczko  
Commissioner Lyons

FROM: Nils J. Diaz /RA/  
Edward McGaffigan, Jr. /RA/

SUBJECT: STREAMLINING THE NRR RULEMAKING PROCESS

In light of increased rulemaking activities, which are only expected to grow in the near future, we believe it is of paramount importance to further enhance NRR rulemaking activities to improve efficiency and timeliness, while eliminating unnecessary burdens. Thus, we propose streamlining the rulemaking process by removing unnecessary constraints, while simultaneously enhancing transparency and public participation. There are several tools by which the agency can achieve these goals, including the following:

- At the discretion of the Director of NRR, and in consultation with the General Counsel, the staff may waive the development and submission of rulemaking plans;
- The staff may waive review by the Committee to Review Generic Requirements ("CRGR") at the proposed rule stage, and, notwithstanding 10 C.F.R. § 2.809 and the Memorandum of Understanding between the ACRS and the EDO, waive review by the Advisory Committee on Reactor Safeguards ("ACRS") at the proposed rule stage (as was done, for example, in the ongoing Part 52 rulemaking). Comments from CRGR should be limited to addressing, at the final rule stage, any public comments received relevant to backfit matters. Comments from the ACRS may be submitted to the Commission either during the comment period for the proposed rule, or following the close of the public comment period, but prior to issuance of the final rule.
- In addition, the staff may release proposed rule text for public review, and hold workshops, if necessary, prior to submission of the rule to the Commission. This has been successfully done in past rulemakings (*i.e.*, rulemakings associated with 10 CFR Parts 26, 35 and 70), and is done for most rulemakings by NMSS, at least with Agreement States. The early release of proposed rule text in concert with workshops should reduce or eliminate the need for extended public comment periods (*i.e.*, those in excess of 75 days).
- An additional tool would be the widespread use of working groups and steering committees, designed to reduce the cumbersome concurrence process and eliminate duplicative management review.

We welcome additional mechanisms that the EDO, the General Counsel, or Director of NRR may develop for streamlining and increasing the transparency of the rulemaking process, thus allocating the appropriate level of resources for the most important rulemaking actions, and

ensuring that the staff's hands are not tied by perceived or real procedural prerequisites that are unnecessary for a given rulemaking.

These mechanisms should be employed for any rulemaking actions where the Director of NRR sees a net benefit. For example, some of these mechanisms clearly would be appropriate for the pending 10 CFR § 50.68 direct final rule. These techniques will likely save resources, which, with the vastly expanded rulemaking agenda, are a significant concern for the agency. These actions are not intended to reduce any public involvement or eliminate processes mandated by the Administrative Procedure Act. Rather, we believe they will further empower all stakeholders.

The Director of NRR should examine all current and planned rulemakings to assess whether these techniques would be appropriate for current and anticipated rulemaking activities. Any additional mechanisms that would streamline the process further should be raised to the Commission for consideration.

Moreover, we are concerned with contractor dependence in completing our rulemaking activities. Contractors are heavily utilized in NRR rulemakings, including resolution of public comments and development of statements of consideration. With significant elements of the rulemaking process fundamentally outside of the agency's day-to-day control, both resources and schedules could be negatively impacted. The NRR staff, in consultation with OGC, should provide the Commission with a paper addressing the feasibility, as well as the advantages and disadvantages, of reducing contractor dependence in the rulemaking arena. In a related vein, the staff should address the option of OGC assisting in the allocation of resources prior to the proposed rule stage to help determine the most efficient use of resources. Furthermore, the staff should take necessary steps to ensure that, when contracting is needed, it is accomplished in a manner that best serves the needs of the agency; *i.e.*, in the most efficient and effective manner possible.

Finally, the staff should consider whether streamlining mechanisms can be usefully employed by other program offices that undertake rulemaking.

SECY, please track.

cc: A. Vietti-Cook, SECY  
L. Reyes, EDO  
G. Wallis, ACRS  
K. Cyr, OGC  
J. Dyer, NRR