February 9, 1996

FOR: The Commissioners
FROM: James M. Taylor /s/
Executive Director for Operations
SUBJECT: PROPOSED RULEMAKING ACTIVITY PLAN

PURPOSE:

The purpose of this memorandum is to provide for Commission review of the staff's proposed plan for rulemaking. The draft integrated Rulemaking Activity Plan (RAP), enclosed as Attachment 1, includes descriptions of rules under the direction of the EDO that are currently actively being conducted and those that are being considered for future action. This process is intended to assure that the staff incorporates Commission policy input to contemplated rulemakings at an early stage of rule plan development, before significant resources are expended. It further will provide a mechanism to determine whether previously initiated rules should continue, be redirected or be terminated. Finally, the "Rulemaking Activity Plan" includes priorities for all ongoing and planned rules to allow effective allocation of resources in a manner consistent with Commission policy.

BACKGROUND:

In a Commission Staff Requirement Memorandum (SRM) of April 7, 1995, on the status of ongoing regulatory reform initiatives, the Commission directed the staff to (1) establish a process to review and prioritize rulemaking efforts on a continuing basis and (2) pay particular attention to how rulemaking efforts receive staff approval for initiation. The Commission asked that the staff identify all rulemakings currently under development or being contemplated and, based on safety benefit and cost, make a recommendation on the need for continuing the rulemaking process, and to submit this information to the Commission for its review. In response to this SRM the staff developed a comprehensive "Rulemaking Activity Plan" (RAP) for all rulemaking activities under the direction of the Executive Director for Operations. This rulemaking plan was transmitted to the Commission by memorandum dated May 10, 1995 and the Commission approved the initial version of the plan on May 26, 1995. The structure and format of the Rulemaking Activity Plan has been designed to facilitate a review of all ongoing and planned rulemaking activities at various stages of development. RES is responsible for maintaining and periodically updating this Plan such that its updating will be synchronous with the 6-month update and input interval required for the OMB Regulatory Agenda for major agency rulemakings and for the more detailed NRC Regulatory Agenda, published as NUREG-0936. The Office Directors under the EDO are responsible for the timely supply of Plan input to RES for all rulemakings under development and those being contemplated for development in their respective offices. RES will continue to submit the updated Rulemaking Activity Plan for review on an approximate 6-month interval.

Management Directive 6.3 Rulemaking Planning Process

In addition to the Commission review and approval of the body of rulemaking actions described in RAP, there is an additional opportunity for Commission redirection of rules while still in the conceptual stage of development. This comes when a more detailed individual rulemaking plan, developed in accordance with the Management Directive (MD) 6.3 process, is submitted to the Commission for review and approval(1). These individual plans contain more detailed information than the brief synopses in the RAP and provides an opportunity for a more in-depth review of the rulemaking concept. The Commission level review of the RAP and subsequently of the individual rulemaking plans have the effect of assuring through a phased approach that staff resources are reserved for those rulemaking actions that have had the benefit of Commission oversight and policy direction. Currently the staff seeks Commission approval of rulemaking plans through the negative consent process.

Alerting The Commission To Significant Policy Issues

During the course of rulemaking planning or during the formal rulemaking process significant policy issues may arise for which the staff could benefit from Commission guidance. These may arise because of public comment on proposed rules or petitions, because of events that occur after initiation of the rulemaking, or when the staff gains new insight during planning or the development of the proposed revision. The staff will seek Commission direction on such issues as they arise.

Interacting With The Agreement States In Rulemaking Planning

Currently the staff makes draft individual rulemaking plans available to the agreement states via the rulemaking electronic bulletin board so that any issues the states might identify can be included in the plan for consideration by the EDO or Commission in their reviews. The bulletin board is also available for public view. An alternative approach would be to defer the agreement states review until after the Commission review has been completed and to transmit the document directly to the states rather than via the bulletin board. The staff plans to inform the agreement state of this alternative process and adopt it unless the Commission directs otherwise.

Trends In Rulemaking Activities

In reviewing the types of rulemaking activities ongoing or planned in the RAP, I noted that the majority of efforts are now being oriented toward regulatory reform, regulatory burden reduction or codifying those alternatives yielding greater flexibility to the regulated entities. Furthermore, rulemaking activities with the objective of developing risk-informed, performance-based regulations are now being included in our planning. The body of activities described in the RAP indicate clearly that the regulatory reform initiatives by the Commission and by the current/past administrations have to date achieved considerable success and that we are on course to develop more risk-informed, performance-based regulations.

Finally, there are several activities currently underway that have an impact on our rulemaking planning. The results of the regulations review activities recently conducted as part of the National Performance Review-Phase II (except for three minor administrative type rule changes), the results of the task of identifying and revising regulations for which "Generic Exemptions" are issued on a routine basis, and all rulemaking initiatives that may be needed to respond to the lessons learned from the MIT event have not been included in this report. These will be considered in developing future revisions of the Rulemaking Activity Plan. Also, the results from the NAS report "Radiation In Medicine: A Need for Regulatory Reform" and the NMSS effort on Business Process Reengineering may impact the content of the Rulemaking Activity Plan and will be reflected in future plan updates as appropriate.

Unless the Commission directs otherwise, the staff will continue to implement the RAP as provided in Attachment 1 pending the Commission's decision to modify or approve the plan.

James M. Taylor
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Attachment: As stated

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1. All non-administrative rulemaking activities under direction of the EDO are initiated through the MD 6.3 process with certain exceptions where the rulemaking is developed with a very short schedule under the direct guidance of the Office of the EDO. In such cases Commission approval is sought at the earliest possible time.