

February 3, 1999

FOR: The Commissioners

FROM: William D. Travers /s/  
Executive Director for Operations

SUBJECT: PROPOSED RULEMAKING ACTIVITY PLAN

## PURPOSE:

The purpose of this Commission paper is to provide for Commission review the staff's proposed Rulemaking Activity Plan (RAP). The RAP includes descriptions of rulemakings that are currently being conducted and those that are being considered for future action. This review is intended to ensure that the staff incorporates Commission policy direction into contemplated rulemakings at an early stage of rule plan development, before significant resources are expended. This review also provides a mechanism for determining whether previously initiated rulemakings should continue, be redirected, or be terminated. The RAP includes priorities for all ongoing and planned rules to allow effective allocation of resources in a manner consistent with Commission policy.

[Attachment 1](#) is a "Summary of Changes to the Rulemaking Activity Plan Since the Last Plan Update, June 1998." [Attachment 2](#) is the RAP.

## BACKGROUND:

- [Target Completion Dates and Staff Resources \(FTEs\) Needed to Complete Rules](#)
- [Regulatory Improvement in Granting Generic Exemptions to Regulations](#)
- [Risk-Informed, Performance-Based or Risk-Informed, Less Prescriptive Regulation \(DSI-12\)](#)
- [Potential Rulemaking Action Related to EPA Activities on Mixed Waste](#)

In a Staff Requirement Memorandum (SRM) dated 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 directed the staff to identify all rulemakings then under development or being contemplated and, based on safety benefit and cost, make a recommendation on the need for continuing the rulemaking process, and submit this information to the Commission for its review. In response to this SRM, the staff developed the initial version of the RAP. It 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 RAP is designed to facilitate a review of all ongoing and planned rulemaking activities at various stages of development. The staff maintains and periodically updates the RAP in accordance 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. To ensure the completeness of the RAP updates, all Office Directors, the Chief Financial Officer, and the Chief Information Officer are responsible for all actions on their respective rulemakings and have provided timely information on all rulemakings under development or being considered for development in their respective offices. The staff will continue to submit the updated RAP for review at 6-month intervals consistent with the Commission SRM on SECY-97-167, dated September 16, 1997.

On July 9, 1998, the semiannual update of the RAP was sent to the Commission for approval ([SECY-98-168](#)). The Commission approved SECY-98-168 in an SRM dated October 19, 1998. The Commission comments have been incorporated in this current update of the RAP.

As directed in the October 19, 1998 SRM, the staff revised [attachment 1](#) to identify significant changes in staff position associated with rulemakings or petitions. [Attachment 1](#) also provides a summary of significant changes to the RAP since it was last updated (new rulemakings and petitions, rules terminated, rules that are on-hold, and proposed changes in the priority of a rule). Additionally, [attachment 1](#) provides the rationale for why the priority for each of these rulemakings was changed from high to low, and why one rulemaking was placed on hold. Due to staff reassignments and other higher priority actions directed by the Commission, the staff proposes to place one rulemaking on hold and reprioritize three rules to low priority. These low priority rulemakings are being processed, although not at the expense of any high priority actions. These rulemakings are assigned to individuals who also have other rulemaking actions which are of higher priority. This summary will be provided with each subsequent update of the RAP.

## TARGET COMPLETION DATES AND STAFF RESOURCES (FTEs) NEEDED TO COMPLETE RULES

Responding to Commission SRM on SECY-97-062, dated April 25, 1997, the RAP was revised to include "Target Completion Dates" for all "active" individual rulemakings. In addition, the RAP was revised to include an estimate of the total staff resources (FTEs) needed by each office to complete development, review, and/or processing of rulemaking packages associated with rule plans, proposed rules, or final rules. Office resource estimates are based on an average cost to complete an individual rulemaking from initiation through final publication in the Federal Register. An average cost is used because a more accurate estimate is not available until the package has been fully developed and the degree of complexity is known. It is generally recognized by reviewing offices that some rules will take less time while other, more complex rules, will require more time to complete.

## REGULATORY IMPROVEMENT IN GRANTING GENERIC EXEMPTIONS TO REGULATIONS

SECY- 96-147, "Planning for Pursuing Regulatory Improvement in the Area of Exemptions Granted to Regulations," dated July 1, 1996, identified 11 rulemaking actions with the potential for reducing the present and future need for recurring exemptions. Seven of these rulemaking actions are included in the RAP and are identified in Appendix B. Of these seven rulemakings, two were completed during this reporting period. The final rule on "Exemption

from Criticality Monitor Requirements for Fresh Fuel, 10 CFR 70.24" was published in the Federal Register on November 12, 1998 (63 FR 63127). The rulemaking on "Performance-Oriented Requirements for Fire Protection of Nuclear Power Facilities, Part 50" is no longer considered necessary (per SECY-98-058) and has been terminated. One final rulemaking not included in SECY-96-147, "Reduction In Nuclear Power Reactor Security Requirements Associated With Insider Threat (Part 73.55)," was published in the Federal Register on December 2, 1997 (62 FR 63640). This rulemaking was not included in SECY-96-147 because the final rule was ready for publication. Four of the rulemaking actions initially listed were dropped: the rulemaking to minimize exemptions to 10 CFR 50.55(a) is no longer considered necessary (per SECY-96-218, "PRA Implementation Plan"); the rulemaking to change various parts of the regulations to modify the definition of decommissioning has been subsumed into the rulemaking for license termination; the rulemaking to revise medical uses of radiation, Part 35.29, has been subsumed into the omnibus rulemaking to revise Part 35;" and the rulemaking to change "Financial Assurance For Teletherapy and Krypton-85 Licensees (Parts 30 and 35)" has been terminated.

At the Commission's request, the staff continues on an ongoing basis to review recent experience with exemptions to determine whether any changes or additions to these seven candidate rulemakings are warranted. The staff has not identified any additions at this time.

Commission SRMs related to reducing the need for exemptions have provided additional guidance to the staff. Specifically, the staff was directed to include in future semiannual updates of the RAP a listing and description of the applications for exemptions that have been received and the exemption applications that have been granted or denied during the reporting period of the plan. Also, the staff was directed to provide additional information on those exemption requests that have been granted to indicate how many have a related rulemaking being planned and how many do not. This information is included in Appendix B to the RAP, with Attachment 1 for NRR and Attachment 2 for NMSS. If a trend in exemption requests is detected that could be better handled by rulemaking, the staff will promptly inform the Commission. The exemption summary information is as follows:

From January 1, 1997, through December 1998, NRR received 270 exemption requests. Of these, 180 requests were granted, 9 requests were denied, and 81 requests are still under review. Of the 180 exemptions granted and the 81 under review, 202 are associated with rulemakings that have been completed, are ongoing, or are being planned. Seventy-three relate to a rulemaking on Part 70.24; 34 relate to a rulemaking on Part 50, Appendix R; 23 relate to a rulemaking on Part 50.60; 25 relate to a rulemaking on Part 73.55 and Part 72; 9 relate to a rulemaking on Part 50, Appendix E; and 38 relate to a rulemaking on Part 26, Parts 50.44, 50.46, 50.54 and Appendix K.

From January 1, 1997, through December 1998, NMSS received 116 exemption requests. Of these, 80 requests were granted, 7 requests were denied, and 29 requests are still under review. Of the 80 exemptions granted and the 29 under review, 78 are associated with rulemakings that have been completed, are ongoing, or being planned. Seven relate to a rulemaking on Part 34; 37 relate to a rulemaking on Part 35; 15 relate to a rulemaking on Part 36; 6 relate to a rulemaking on Part 39; 4 relate to a rulemaking on Part 70; and 9 relate to a rulemaking on Part 72.

#### RISK-INFORMED, PERFORMANCE-BASED OR RISK-INFORMED, LESS PRESCRIPTIVE REGULATION (DSI-12)

The Commission SRM on COMSECY-96-061, "Risk-Informed, Performance-Based Regulation (DSI-12)," dated April 15, 1997, directed the staff to proceed in the direction of enhancing the PRA Implementation Plan by building on the Regulatory Review Group (RRG) results. These results were initially focused on reducing the regulatory burden, with a more focused assessment of those regulations that are amenable to a risk-informed, performance-based or risk-informed, less prescriptive approach. In determining the priority and scope of regulatory activities, the staff considered the cumulative impacts on safety, stakeholder initiatives, and burden reduction, as well as the effect on NRC and licensee efficiency. As requested, to minimize use of resources in any fresh look at the RRG results, the review was incorporated into the semiannual updates of the Commission's RAP as Appendix C.

In two other SRM's on the RAP, the Commission reiterated its desire for the staff to take a "fresh look at the RRG results." The current revision of Appendix C is the staff's response to this direction. It identifies the methodology previously used to develop this appendix and the brief status of RRG items not yet completed. This methodology included a review of each of the RRG topic areas. The revised appendix was discussed at the November 9, 1998 Rulemaking Coordinating Committee meeting attended by NMSS, NRR, and ADM representatives.

Unless the Commission directs otherwise, in the next RAP, the staff will incorporate the information included in Appendix C into the write-up for each rulemaking listed in attachment 2 by adding the heading entitled "Risk-Informed Regulation" (three examples have been provided at the end of Appendix C). Under this heading, each rule will be identified as one of three types:

- RISK-INFORMED REGULATION --** Rulemaking uses a performance-based approach, or Rulemaking uses a less-prescriptive approach, or
- Not a risk-informed rulemaking.

The staff believes that the portion of Appendix C that identifies areas where rules are amenable to a risk-informed approach can be eliminated because in most cases a new rulemaking is added to the RAP by an individual rulemaking plan. Each rulemaking plan prepared by the staff and submitted to the Commission for approval contains a recommendation as to whether the rule is risk-informed and, if so, whether a performance-based or less-prescriptive approach is most appropriate. Each rulemaking plan is approved by the Commission, and it can direct the staff to use one of these risk-informed approaches. If the staff is not otherwise specifically directed, then the Commission's overall policy would apply. This policy is that new rulemakings, to the extent practicable, be risk-informed and use a performance-based or less-prescriptive approach. Therefore, all new rulemakings will be evaluated initially to determine if they should be developed using a risk-informed approach.

#### POTENTIAL RULEMAKING ACTION RELATED TO EPA ACTIVITIES ON MIXED WASTE

EPA's Office of Radiation and Indoor Air has tentative plans to conduct a rulemaking on mixed waste that would set a generally applicable standard for the disposal of low-level commercial mixed waste in facilities permitted under the Resource Recovery and Conservation Act (RCRA). The goal of this effort is to increase the options currently available for the disposal of mixed waste. In order to implement this standard, EPA would like NRC to develop

regulations for simplified procedures for licensing the radioactive portion of waste in RCRA facilities. A memorandum dated November 19, 1998, provided the Commission with information concerning EPA's approach on mixed waste and the staff's preliminary recommendation on how to implement the approach, including the staff's intent to assist EPA in this effort.

RESOURCES:

The resources to implement this RAP are within each respective office's existing budget.

COORDINATION:

The Office of the General Counsel has no legal objection to this paper. The Office of the Chief Financial Officer has reviewed the RAP for resource implications and has no objection. The Office of the Chief Information Officer has reviewed this paper for information technology and information management implications and concurs in it.

RECOMMENDATION:

It is recommended that the Commission approve the implementation of the RAP, as provided in [Attachment 2](#) .

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Attachments: 1. [Summary of Changes to the RAP](#)  
2. [Rulemaking Activity Plan](#)