



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20545-0001

REQUEST REPLY BY: 4/21

April 7, 2006

MEMORANDUM TO: Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

*Approved -
See attached comments.*

FROM: Nils J. Diaz *[Signature]*
Edward McGaffigan, Jr. *[Signature]*

SUBJECT: STREAMLINING THE NRR RULEMAKING PROCESS

[Signature]
5/1/06

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

**Commissioner Merrifield's Comments on
COMNJD-06-0004/COMEXM-06-0006, "Streamlining the NRR Rulemaking Process**

I read with great interest my colleagues' proposal to streamline the NRR rulemaking process, and I agree that there may be some areas where the Commission could help the staff streamline the process. I believe the staff has already made great progress in making improvements to the rulemaking process compared to even five years ago, and some of the proposals by my colleagues could provide even more benefits.

In SECY-03-0131, "Rulemaking Process Improvements," the staff provided a report by a multi-office task force (NRR, NMSS, OGC, and ADM) that spent a year looking at ways to improve the process. The report detailed 36 recommendations to improve the process and the staff worked diligently to implement those recommendations over the ensuing three years. The staff issued the final update on the implementation plan (ML030030699) on March 7, 2006. Most of the 36 recommendations have been implemented. I believe we should build on the good work done by the staff to make further improvements to the process, as outlined in my colleagues' proposal.

By relaxing some of the requirements the Commission has imposed on the rulemaking staff, we may find ways to further streamline the process. I agree with the proposal to waive rule plans. The Commission implemented rule plans so that the Commission could approve going forward before the staff expended substantial effort on a rulemaking. I believe that the Director of NRR and the General Counsel should be able to discern whether a particular rulemaking is worthwhile, and therefore Commission direction is not necessary. Of course, leaving this decision to others means the Commission has to be willing to allow the directors of these offices discretion on determining whether to go forward with a rulemaking effort.

Waiving review by the Committee to Review Generic Requirements and the Advisory Committee on Reactor Safeguards at the proposed rule stage, and allowing them to review the rulemaking after public comments are received, and thus before the staff prepares the final rulemaking package for Commission approval, should also provide some efficiency to the process. Here again, the Commission needs to accept the risk that either of these bodies could identify an issue after the rule has gone out for comment that may delay the final rule, or even result in re-noticing the proposed rule for comment in rare occasions.

The proposal to allow the staff to draft rule language publicly available on a routine basis, rather than asking for Commission permission for specific individual rules, may also provide a benefit. Allowing stakeholders more time to review the draft language before the proposed rule is actually approved by the Commission should preclude the need for commenters to ask for extensions to the normal 75-day public comment period in all but the most extreme circumstances. That said, I am concerned that releasing only the draft rule text without releasing the draft statements of consideration (SOCs), or technical basis for the rulemaking, may serve to confuse commenters. I propose that the staff be allowed to release draft SOCs and/or draft technical bases, if appropriate, along with the draft rule language. The NRR office Director and the General Counsel, or their designees, should determine when the draft rule language and supporting documentation have had sufficient review to be released to the public.

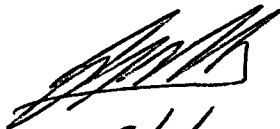
I believe the proposal to make widespread use of working groups and steering committees to reduce concurrence time and duplicative management review may already be part of the staff's

current practice. I understand that both NRR and NMSS routinely use working groups with members from the appropriate offices (OGC, ADM, NSIR, NMSS, etc). In addition, for the more complex or controversial rulemakings, steering committees consisting of SES managers from the cognizant offices oversee the rulemaking effort.

I note that my colleagues state in the paper that saving resources is a significant concern because of a "vastly expanded rulemaking agenda." I am unsure what this statement means. It is my understanding that NRR rulemaking resources are projected to be fairly steady from the budget projections I have seen through FY2008. It is true that the Commission has directed the staff to expedite some rulemakings in the current fiscal year, but I see no long term trend of increased rulemaking effort.

The paper also proposes that the staff write a paper on reducing dependence on contractors for rulemaking tasks because of a concern that resources and schedules could be negatively impacted by a heavy reliance on contractors. Here again, I am not sure what problem we are trying to solve. The rulemaking staff relies on contractors to assist in developing the regulatory analyses and binning public comments, as well as specialized technical expertise for certain complex rulemakings where we may not have the expertise in house. I have not heard that contractors, or a lack of NRC oversight of contractors, have resulted in substantial delays to rulemaking schedules. I believe there is a benefit to using contractors for specific purposes to complete a rulemaking effort. When the rule is completed, the contract expires. The alternative to contracting is to expand the expertise of the staff (and thus the size of the permanent NRC rulemaking staff). I am not convinced that such expenditures would be the wisest use of our resources.

In summary, I agree that waiving the preparation of rule plans, as well as CRGR and ACRS review at the proposed rule stage could help streamline the rulemaking process. In addition, allowing the staff to post draft rule text (and possibly other draft documents) before gaining Commission approval on a proposed rule could also streamline the public comment portion of the process. I would not oppose the staff evaluating the pros and cons of these proposals and providing recommended options to the Commission. I would propose, however, that the staff perform this evaluation and develop a paper that provides these options as part of an overall assessment of the impacts of the implementation of the just-completed interoffice rulemaking process improvement implementation plan. I believe staff from all of the offices that are involved in the majority of the agency's rulemaking activities (NRR, NMSS, OGC, ADM, and OIS) should be part of this assessment to see if the improvements made to date have had the desired effect, and whether the further improvements proposed by my colleagues could streamline the rulemaking process even further.



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attached edits.
4/19/06
G-JAC/eko

MEMORANDUM TO: Commissioner Merrifield
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Commissioner Lyons

FROM: Nils J. Diaz *[Signature]*
Edward McGaffigan, Jr. *[Signature]*

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Commissioner Lyons' Comments on COM-06-0004-NJD/COM-06-0006-EXM

I join the Chairman and Commissioner McGaffigan in supporting the removal of unnecessary constraints on our rulemaking process while simultaneously enhancing transparency and public participation. In general, I expect the staff to continuously seek improvements to the efficiency, effectiveness, and transparency of the rulemaking process and to take advantage of currently available process flexibility when appropriate, seeking Commission approval as necessary.

I note that on November 6, 2002 the staff issued an agency-wide Rulemaking Process Improvement Task Force report with many recommendations (ML0231801081), several of which were aimed specifically at improving timeliness. The staff very recently issued a March 2006 final update on the status of implementing most of these recommendations (ML030030699). Some of the recommendations overlap those in this COM and several have been implemented by NRR since December 2003. Staff should review the effectiveness of the recommendations that have already been implemented and seek further enhancements where possible, also taking into consideration Commission direction pursuant to this COM.

I support allowing staff to waive a rulemaking plan upon approval of OGC and the Director of NRR. However, staff should keep the Commission fully informed of such waivers.

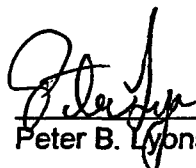
I support allowing staff to waive CRGR and ACRS reviews at the proposed rule stage when permitted by applicable regulation or law. I believe that although early CRGR and/or ACRS reviews can be very helpful, both of these reviews are substantively informed and can be more efficient when public comments on a proposed rule and the associated staff evaluations are available. Staff should work out suitable communication arrangements with CRGR and ACRS to keep them informed of such waivers and to consider specific requests from either for earlier review opportunities.

I support the release of proposed rule text, and Statements of Consideration if available, and the conduct of associated workshops as appropriate, prior to submission of the proposed rule to the Commission. In all these cases, the objective must be early engagement of the public and other stakeholders with the goal of reducing the need for extended formal public comment periods (e.g. beyond the legally required period). However, staff should keep the Commission fully informed of its intentions prior to such activities.

Staff should continue to seek administrative process efficiency improvements, such as reducing management concurrence time.

I believe an appropriate use of contractors may be needed to assist the NRC in handling the coming rulemaking workload and could be utilized without adversely impacting resources and schedules. However, I would be interested in any staff views on improving the utilization of contractors. I would also support asking the staff to examine ways to improve early collaboration between OGC and other applicable Offices to estimate total expected resource allocations for a rule and for efficiency gains.

The Director of NRR should examine all current and planned rulemakings to assess whether any techniques approved by the Commission via this COM or that are already available would be appropriate to use. Any additional mechanisms identified by the staff that would help achieve the objectives noted above for the rulemaking process should be raised to the Commission for consideration.


Peter B. Lyons

4/25/06
Date