

May 31, 2006

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan

FROM: Andrew L. Bates, Acting Secretary **/RA/**

SUBJECT: COMNJD-06-0004/COMEXM-06-0006 - STREAMLINING THE
NRR RULEMAKING PROCESS

This memorandum is to inform you that the Commission has concurred in your proposal related to streamlining the rulemaking process. The attached SRM provides staff direction on this issue.

This completes action on COMNJD-06-0004/COMEXM-06-0006.

Attachment:
As stated

cc: Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
EDO
OGC

May 31, 2006

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations

Karen D. Cyr
General Counsel

FROM: Andrew L. Bates, Acting Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - COMNJD-06-0004/COMEXM-06-0006
- STREAMLINING THE NRR RULEMAKING PROCESS

The Commission has approved the following measures to improve the efficiency and timeliness of the rulemaking process. These measures should be implemented as soon as practicable.

1. The staff may waive the development and submission of rulemaking plans at the discretion of the Director of NRR, and in consultation with the General Counsel. When the staff determines that a rulemaking plan is necessary, the staff should consider options to develop additional efficiencies, such as making the rulemaking plan more concise (perhaps no more than a few pages), or providing a rulemaking plan through informal mechanisms such as Commission technical assistant briefings.
2. 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, may 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. While the Commission grants the staff permission to waive review by both committees at the proposed rule stage, due consideration should be given to the merits of earlier engagement with one or both committees, if the staff determines that such engagement will result in a more efficient and effective process for a particular rulemaking. When committee reviews are waived, the staffs of both committees should continue to be provided copies of the proposed rules and supporting documentation to keep them informed. The staff should work out suitable communication arrangements with ACRS to keep them informed of waivers of ACRS reviews at the proposed rule stage and to consider specific requests for earlier review opportunities. Nothing in this SRM should be construed as in any way discouraging open informal discussion of proposed rule documents with ACRS staff. The staff and ACRS should also work to coordinate schedules in order to enable timely and effective rulemaking.

3. The NRR staff may routinely release draft rule text, statements of consideration, and the technical basis for public review, and hold workshops, if necessary, prior to submission of a proposed rule to the Commission. Draft rule text has been released on a case-by-case basis for 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 draft rule text and supporting documentation in concert with workshops should reduce or eliminate the need for extended public comment periods (*i.e.*, those in excess of 75 days). The staff should notify the Commission of a planned release of draft rule text for public review prior to submission of the proposed rule to the Commission.
4. 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 via the staff's recently completed Rulemaking Process Improvement Implementation Plan would be appropriate to apply to ongoing rulemakings, or those that may begin in the current fiscal year. 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.
5. The staff should continue using working groups as well as steering committees consisting of SES managers, as appropriate, to expedite the concurrence process and eliminate duplicative management review.

After taking the immediate steps described above, the staff should take the following action.

6. The Rulemaking Coordinating Committee should conduct an evaluation of the overall effectiveness of the just-completed interoffice Rulemaking Process Improvement Implementation Plan. All offices that are involved in the majority of the agency's rulemaking activities (*i.e.*, NRR, NMSS, OGC, ADM, OIS) should participate in this assessment to determine if those improvements, as well as the additional improvements described above, have succeeded in streamlining agency rulemakings. The Committee and participating offices should further seek to identify any other potential options that could streamline the rulemaking process (not only for NRR, but for other affected program offices).

Further, as part of the evaluation, the staff, in consultation with OGC, should address the feasibility, as well as the advantages and disadvantages, of reducing contractor dependence in the rulemaking arena. The staff should also examine ways to improve early collaboration with affected offices, particularly OGC and OIS, regarding the allocation of resources prior to the proposed rule stage, to determine the most efficient use of resources. Furthermore, the staff should address the 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.

The staff should provide the results of this evaluation to the Commission within approximately one year.

cc: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
CFO
OCA
OPA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR