UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

SECRETARY

February 3, 2016

MEMORANDUM TO: Victor M. McCree
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary /**RA/**

SUBJECT: STAFF REQUIREMENTS – SECY-15-0129 – COMMISSION INVOLVEMENT IN EARLY STAGES OF RULEMAKING

The Commission commends the staff for providing a timely and thorough response to the Commission's direction to provide a proposed plan for enhanced Commission involvement in the early stages of agency rulemaking. The Commission has approved the staff's specific recommendations that were summarized on page 10 of SECY-15-0129, with the exception of recommendation 8, and subject to the changes and comments below. With respect to recommendation 8, the Commission has neither approved nor disapproved reaffirming the current role of the Committee to Review Generic Requirements (CRGR).

During the pendency of the Commission's deliberations on SECY-15-0129, Congress passed and the President signed Public Law 114-113, including Division D, "Energy and Water Development and Related Agencies Appropriations Act, 2016." The Joint Explanatory Statement accompanying the Act stipulates that a rulemaking plan be prepared for all rulemakings except those exempted by the Commission and directs the minimum content of a rulemaking plan. Consistent with this, and upon its own deliberation, the Commission modifies the template and process proposed by the staff in SECY-15-0129, as follows.

Recommendation 1:

The new rulemaking plan requirement should apply to all rulemaking that is not already explicitly delegated to the staff as a staff delegated rulemaking (the modifier "nonroutine" should not be used).

The staff should make the following revisions to the streamlined rulemaking plan template:

a. In addition to listing a preliminary priority, a brief discussion regarding the basis for the preliminary priority should also be provided.

b. The "Description and Scope" section of the template should define the regulatory issue, describe the existing regulatory framework, identify regulatory options and alternatives to rulemaking, and ~~also~~ discuss why rulemaking is preferable to these other alternatives.

c. Include, as an enclosure a summary OGC analysis of legal matters.

d. Include a section containing a preliminary backfit analysis.

e. Include a preliminary assessment of the cumulative effects of regulations (CER), to the extent known, including a description of any early stakeholder engagement upon which this assessment is based.

f. Include a section on Agreement State considerations.

g. Include an explicit question to the Commission, and recommendation if desired, on whether ACRS review of the proposed rule is warranted.

The staff should provide draft and final regulatory bases to the Commission for all rulemaking that is not already explicitly delegated to the staff via Commissioners Assistants Notes no less than 10 business days before publication to ensure the Commission is provided an opportunity to assess whether additional involvement is warranted. Consistent with the Joint Explanatory Statement accompanying P.L. 114-113, the staff must obtain prior Commission approval if it wishes to prepare a regulatory basis document before the Commission has approved a rulemaking plan.

Recommendation 2:

The staff should explore ways to minimize the resources necessary to discontinue rulemaking, such as not completing a full regulatory analysis once enough information is gained that a cost-benefit test would not be passed.

Recommendations 7 & 8:

The staff should provide the Commission the criteria and guidance it develops for triggering a Committee to Review Generic Requirements (CRGR) review of a proposed rule.

The staff should inform the Commission if it determines that further process enhancements regarding CRGR would be beneficial after it has been able to assess lessons-learned and feedback from the use of the new guidance and criteria.

Additional

The rulemaking process should include explicit guidance for the staff to raise potential policy issues to the Commission as early as practicable in the rulemaking process, especially in those instances where leadership is not able to resolve significant differences in approach.

cc: Chairman Burns
Commissioner Svinicki
Commissioner Ostendorff
Commissioner Baran
OGC
CFO
OCA
OPA
ODs, RAs, ACRS, ASLBP (via E-Mail)
PDR

POLICY ISSUE
Notation Vote

October 19, 2015 SECY-15-0129

FOR: The Commissioners

FROM: Victor M. McCree
Executive Director for Operations

SUBJECT: COMMISSION INVOLVEMENT IN EARLY STAGES OF RULEMAKING

PURPOSE:

This paper responds to Commission direction in Staff Requirements Memorandum (SRM)-COMSGB-15-0003, "Commission Involvement in Early Stages of Rulemaking," dated August 14, 2015 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15226A355). The U.S. Nuclear Regulatory Commission (NRC) staff is requesting Commission approval of its proposed plan to increase the Commission's involvement in the rulemaking process with the objective of ensuring early Commission engagement before expending significant NRC staff resources.

SUMMARY:

In response to SRM-COMSGB-15-0003, this paper provides the Commission with a proposed plan that supports the Commission's policymaking and oversight roles in the rulemaking process. While many changes introduced since 2006 have made the process more efficient and transparent, a number of steps in the rulemaking process can be better defined to enhance the Commission's role in initiating and approving the development of rules.

This paper contains a background and the current status of the NRC's rulemaking program and includes descriptions of past and current Commission direction concerning rulemakings. The paper also includes a description and assessment of requirements, such as the Committee to Review Generic Requirements' (CRGR) and the Advisory Committee on Reactor Safeguards' (ACRS) review of rules. Furthermore, the paper contains a discussion of the staff's eight recommendations for Commission involvement in the early stages of rulemaking.

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BACKGROUND:

Commission Direction in SRM—COMSGB-15-0003

In SRM-COMSGB-15-0003, the Commission directed the NRC staff to provide a proposed plan for increasing the Commission's involvement in the rulemaking process. The Commission directed that the proposed plan include, at a minimum, the following:

- an assessment of (and a means of addressing) any lessons learned from past changes to Commission engagement in the rulemaking process;
- a recommendation for possibly reintroducing Commission approval of the Rulemaking Activity Plan;
- a recommendation for reconsideration of the Commission's 2006 direction with respect to the approval of rulemaking plans; and
- a recommendation for reconsideration of the Commission's 2006 direction with respect to the reviews of proposed rules by the CRGR and the ACRS.

The Commission also directed the NRC staff to:

- Analyze whether amendments to the CRGR charter to alter its role in the agency's rulemaking process have the potential to better inform the agency's allocation of resources and prioritization of activities; and
- Consider the option of requiring the submission of a brief notation vote paper to the Commission seeking authorization to initiate any nonroutine rulemaking.

Rulemaking Coordinating Committee Action

Since 1998, the Rulemaking Coordinating Committee (RCC), comprised of members from the NRC's lead rulemaking offices[1] and chaired by the Office of Administration (ADM), has ensured that the method used to develop and issue rules has been consistent throughout the agency. Periodically, the NRC has initiated a review of the rulemaking process and has implemented changes to streamline it. Under the auspices of the RCC, the NRC formed an interoffice working group to respond to Commission direction in SRM-COMSGB-15-0003. The working group also includes participants from ACRS and CRGR.

Rulemaking Plans

The NRC began using rulemaking plans in 1995 as part of its effort to shorten rulemaking schedules, improve coordination among offices on rulemaking development, and use resources more efficiently. A rulemaking plan is not required by the Administrative Procedure Act; however, the NRC staff used rulemaking plans as a means to document the NRC staff's definition of the regulatory issue, identify why NRC rulemaking action is necessary, outline

1. Office of Nuclear Material Safety and Safeguards (NMSS), Office of Nuclear Reactor Regulation (NRR), Office of New Reactors (NRO), and the Office of General Counsel (OGC). Representatives from the following also attend monthly RCC meetings: Office of Nuclear Security and Incident Response, the Office of Information Services, the Office of Nuclear Regulatory Research, the Office of International Programs, and the Office of the Chief Financial Officer (OCFO).

alternatives to rulemaking, obtain management consensus on the direction of the rulemaking, provide the results of early stakeholder engagement, and estimate resource requirements. In the early 2000s, an internal report found that the development of a rulemaking plan added a significant amount of time to the overall rulemaking process, and did not shorten the time needed to develop a proposed rule.

In subsequent years, the NRC employed enhancements to the rulemaking process that made rulemaking plans less important. In particular, initiatives to mitigate the cumulative effects of regulation, the Common Prioritization of Rulemaking (CPR), and the requirement to develop a regulatory basis prior to the development of a proposed rule addressed issues more effectively. In 2006, the Commission granted a delegation of authority to the Director of NRR, allowing the NRR Director discretion to waive the development and submission of rulemaking plans in consultation with the General Counsel.[2] In that delegation, the Commission instructed that the staff "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."[3] In 2007, the Commission delegated this same waiver authority to the Director of the Office of Federal and State Materials and Environmental Management Programs (FSME).[4] The NRC staff continued to submit rulemaking plans for Commission review and approval, when appropriate.[5] In 2013, Management Directive (MD) 6.3, "The Rulemaking Process," was updated to document the authority for lead rulemaking offices to waive the preparation of rulemaking plans.[6]

Requirements that the ACRS and CRGR Review Rules

In 2006, the Commission approved the waivers of ACRS review at the proposed rule stage and CRGR review of rulemaking packages, as part of its effort to improve the rulemaking process.[7] However, these waivers did not alter the ability of ACRS and CRGR to submit comments to the Commission and the Executive Director for Operations (EDO) at any time during the rulemaking process. In granting the waivers, the Commission instructed the NRC staff that "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."[8] The Commission further instructed the NRC staff that, when the

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2 SRM on COMNJD-06-0004/COMEXM-06-0006, "Streamlining the NRR Rulemaking Process," dated May 31, 2006 (ADAMS Accession No. ML061510316).

3 Ibid.

4 SRM on SECY-07-0134, "Evaluation of the Overall Effectiveness of the Rulemaking Process Improvement Implementation Plan," dated October 25, 2007 (ADAMS Accession No. ML072980427). FSME is now NMSS.

5 SECY-07-0203, "Rulemaking Plan: 10 CFR Part 110, 'Export and Import of Nuclear Equipment and Material; Updates and Clarifications,'" dated November 20, 2007 (ADAMS Access No. ML071440394). SRM on SECY-07-0203, "Staff Requirements – SECY-07-0203, "Rulemaking Plan: 10 CFR Part 110, 'Export and Import of Nuclear Equipment and Material; Updates and Clarifications,'" dated December 17, 2007 (ADAMS Accession No. ML073511433). SECY-08-0059, "Rulemaking Plan: Part 74 – Material Control and Accounting of Special Nuclear Material," dated April 25, 2008 (ADAMS Accession No. ML080580273). SRM on SECY-08-0059, "Rulemaking Plan: Part 74 – Material Control and Accounting of Special Nuclear Material," dated February 5, 2009 (ADAMS Accession No. ML090360473).

6 MD 6.3, "The Rulemaking Process," dated July 22, 2013 (ADAMS Accession No. ML13205A400).

7 SRM on COMNJD-06-0004/COMEXM-06-0006 (ADAMS Accession No. ML061510316).

8 Ibid.

committee reviews are waived, both committees should continue to be provided copies of the proposed rules and supporting documentation to keep them informed.[9]

In May 2006 the Commission directed the staff to evaluate the effectiveness of improvements made to the agency's rulemaking process.[10] Accordingly, in 2007 the NRC staff provided the Commission with an assessment of the impact of the changes resulting from the rulemaking process improvements.[11] The NRC staff found that "deferring the ACRS and CRGR review until the final rulemaking effectively and efficiently accelerates the proposed rulemaking schedule provided that there are not significant technical or backfit issues."[12] The NRC staff explained that "[i]n the case of CRGR, the working group believes that it is not as important to interact with the committee at the proposed rule stage primarily because external stakeholder comments are used by the CRGR to assess backfit questions at the final rule stage."[13] Furthermore, the NRC staff found that CRGR review of rulemaking packages was duplicative, because rulemaking packages had already gone through each of the individual offices for concurrence before CRGR review. Rulemaking packages include a regulatory analysis of the rulemaking and consideration of backfit issues. Therefore, the NRC staff found that this "thorough vetting of the product significantly diminishes the opportunity for CRGR to add value; the same cannot be said for any other products that CRGR reviews."[14]

In 2007 the NRC staff recommended that ACRS review at the proposed rule stage be eliminated for rulemakings that do not contain significant or controversial technical issues.[15] For routine rulemakings, the NRC staff recommended that it send ACRS the rulemaking package for informational purposes, optimally when the proposed rule is issued for public comment. ACRS would review and comment on the proposed rule at its discretion and, if necessary, request a briefing. ACRS would continue its practice of reviewing the draft final rule package on significant or controversial issues before its submittal for Commission review and approval.[16]

In October 2007 the Commission approved the removal of the requirement for CRGR review of current and future rulemaking packages involving significant or controversial technical issues and directed the NRC staff to provide to CRGR a copy of the draft final rule for informational purposes.[17] In addition, the Commission approved "providing proposed rule packages to the ACRS for comment," adding that "ACRS will be briefed on proposed rules only as a result of an ACRS request" and that "the ACRS should continue its practice of reviewing the [final] rule package before its submittal for Commission review and approval."[18] Also, because ACRS continues to receive a monthly list of items coming to the Commission, ACRS is well positioned to determine which rule packages it should review.

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9 Ibid.
10 SRM on COMNJD-06-0004/COMEXM-06-0006 (ADAMS Accession No. ML061510316).
11 SECY-07-0134 (ADAMS Accession No. ML071780648).
12 Ibid.
13 Ibid.
14 Ibid.
15 Ibid.
16 Ibid.
17 SRM on SECY-07-0134 (ADAMS Accession No. ML ML072980427).
18 Ibid.

Rulemaking Activity Plan

Review and approval of rulemaking plans was not the only method of keeping the Commission informed and involved in the use of agency resources for rulemaking activities. In 1995 the Commission also directed the NRC staff to (1) "establish a process to review and prioritize rulemaking efforts on a continuing basis," (2) "identify all proposed rules currently under development or being contemplated," and (3) "submit this information for Commission review."[19] Consequently, the NRC staff began submitting to the Commission an annual negative consent SECY paper and Rulemaking Activity Plan (RAP) summarizing the NRC's proposed rulemaking activities. In 2001 the RAP changed from a planning and decision paper (i.e., negative consent paper) to an information paper.

Reassessment of the Commission's Role in Early Stages of Rulemaking

In response to the direction in SRM-COMSGB-15-0003, the NRC staff has reassessed the Commission's role in the rulemaking process and sets forth its recommendations and the basis for them. If the Commission approves the recommended process changes, the NRC staff will memorialize these processes in the appropriate policy and guidance documents. The NRC staff recommends that the following process changes be applied to the fiscal year (FY) 2017-2018 planning period, based on the assumption that, absent Commission direction, the rules that are now in the CPR report remain approved. The staff is aware that, concurrent with the development of this paper, the staff is also developing recommendations under Project AIM related to centers of expertise and re-baselining activities. The staff will evaluate the impact of Commission direction on this paper with regard to those activities.

DISCUSSION:

This section provides the NRC staff's basis for the recommendations in its proposed plan. The proposed plan uses lessons-learned from recent changes to the rulemaking process and will standardize the documentation for rule initiation, improve the timing and amount of rulemaking information submitted to the Commission, and enhance communication between NRC staff and ACRS and CRGR.

Commission Involvement in the Early Stages of Rulemaking

Institution of a Streamlined Rulemaking Plan Requirement. The NRC staff reviewed the 47 rules that were prioritized as "high" on the annotated FY 2016-2017 CPR Report (Enclosure 1).[20] Thirty-two of these rules had SRMs containing Commission direction. Nine of the rules were either approved by the Commission during the budgeting process or had an SRM

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19 SRM-M950328, "Briefing on Status of Reactor Regulatory Reform Initiatives," dated April 7, 1995 (ADAMS Accession No. ML003757293).

20 The offices of NRR, NRO, and NMSS are process owners for managing the NRC's rulemakings. These three offices coordinate with each other and the partner offices through a subcommittee of the RCC to produce an annual rule prioritization report through the CPR process.

forthcoming. The remaining six rules were considered "routine"[21] and, therefore, did not warrant a SECY paper and SRM, absent significant policy issues. The NRC staff's analysis shows that these SECY papers have become the primary vehicle used to engage the Commission early in the rulemaking process. During the same time period, in its efforts to address the cumulative effects of regulation, staff has increased its use of shorter, focused documents (e.g., regulatory basis document, preliminary draft rule text) to gain early stakeholder input or to support a public meeting.

Recognizing the importance of Commission involvement and oversight in the rulemaking process, the NRC staff recommends that the Commission require submittal of a streamlined rulemaking plan in the form of a template-based, brief notation vote paper to the Commission seeking approval to initiate any nonroutine, nondelegated rulemaking. The SECY paper process is familiar to the NRC staff and the public, and SECY papers (and their corresponding SRMs) are normally publicly available. Therefore, the use of a new streamlined rulemaking plan would promote transparency. If the Commission approves this recommendation, then it should also rescind its direction in two previous SRMs: (1) the 2006 delegation of authority to the Director of NRR that gave the Director discretion to waive (in consultation with the General Counsel) the development and submission of rulemaking plans;[22] and (2) the 2007 delegation of this same authority to the Director of FSME.[23]

During discussions about whether to recommend that rulemaking plans be required again, the NRC staff considered the agency's past experiences. Previously, rulemaking plans gave the Commission an early opportunity to review the preliminary outline of the scope and impact of a contemplated action and to vote to commence development of a potential rulemaking package prior to significant resource expenditure. The previous rulemaking plans also provided a framework for completing the contemplated action and a mechanism for obtaining early substantive input from the Agreement States. On the other hand, in the past, rulemaking plans became very time-consuming and resource-intensive. Many of the elements traditionally addressed in a rulemaking plan are now contained in the regulatory basis document. Based on this past experience, the NRC staff believes that the desired, meaningful Commission involvement could be achieved by staff's use of a streamlined rulemaking plan.

The NRC staff would format the streamlined rulemaking plan using a SECY paper template, so that consistent information is provided to the Commission (Enclosure 2). The rulemaking plan paper would contain the key information that the Commission would presumably need to make

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21 Routine rulemakings fall under (1) the Commission-delegated authority to the EDO to issue rules of a minor, corrective, or nonpolicy nature that do not substantially modify existing precedent; and (2) the Commission-delegated authority to the CFO to develop and issue a rule that is necessary to carry out the CFO's responsibilities. This includes any revision of the annual fee regulations in Title 10 of the Code of Federal Regulations (10 CFR) Parts 170, "Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services under the Atomic Energy Act of 1954, As Amended" and 171, "Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC," unless the rule involves a significant question of policy. Routine rulemakings include certificates of compliance, Section 50.55a ASME Code updates, the CFO's revision of the annual fee regulations, and rules that make corrections or administrative changes.

22 SRM on COMNJD-06-0004/COMEXM-06-0006 (ADAMS Accession No. ML061510316).

23 SRM on SECY-07-0134, "Evaluation of the Overall Effectiveness of the Rulemaking Process Improvement Implementation Plan," dated October 25, 2007 (ADAMS Accession No. ML072980427).

a decision as to whether rulemaking is warranted. However, the rulemaking plan paper would be less detailed than many of the rulemaking plans that had been submitted prior to the Commission's 2006 decision that eliminated the need for mandatory submission of rulemaking plans. Under this proposed process, communication between the staff and the Commission would be expedited, and no nonroutine, nondelegated new rulemakings would be budgeted and added to the CPR report without prior Commission approval to initiate a rulemaking.[24] The NRC staff has enclosed a sample SECY paper prepared using the draft rulemaking plan template that further illustrates the level of detail that the NRC staff proposes to provide to the Commission.

Commission Approval Required to Terminate a Rulemaking. To ensure smooth and consistent communication and Commission oversight of the rulemaking process, the NRC staff will submit a SECY paper for Commission approval before terminating a rulemaking. The SECY paper would use a slightly modified version of the rulemaking plan template used to propose initiation of new rulemakings. The SECY paper will discuss why the rulemaking is no longer needed and summarize any public comments received on the rulemaking. The NRC staff follows this process now, but this recommendation would formalize the process as a requirement.

Commission Approval Required for Petitions for Rulemaking that Recommend Rulemaking. Currently, all proposed denials of petitions for rulemaking (PRM) are submitted to the Commission for review and approval. The NRC staff recommends that it also submit for Commission approval, through a SECY paper, any recommendation to grant a PRM and develop a proposed rule for public comment. When developing this SECY paper, the NRC staff would use a slightly modified version of the same template that staff would use in the rulemaking plans discussed above. Experience has shown that most PRM issues with technical merit result in a rulemaking with a priority ranking of medium or low. This process change will allow the NRC staff to engage the Commission early in the decisionmaking process and Commission oversight.

Updates to RAP Format, Content, and Schedule. The RAP is submitted to the Commission annually and, for each active rulemaking, provides (1) a summary of the objective of the rulemaking, (2) highlights of recent progress toward completing the rulemaking, (3) the rulemaking's priority and justification, and (4) resource estimates. In addition, the RAP reports on the completed rulemaking actions since the last RAP was submitted to the Commission. The NRC staff's assessment is that the RAP, in its current format and on its current production schedule, may be insufficient to meet the information needs of the Commission. The RAP report currently is redundant, resource-intensive to produce, and includes stale data by the time it reaches the Commission. Accordingly, the NRC staff recommends the future submission of the RAP, through a Commissioners' Assistants (CA) note, in May - June of each year to support Commission review of proposed agency budgets.

The NRC staff would submit the RAP at the same time that the CPR report is provided to OCFO. CPR is used to develop program budget estimates and to determine the relative priority of NRC rulemaking activities. The RAP would continue to include abstracts, justifications, resources, target dates, and milestones. However, the RAP format and content would be

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[24] If the Commission approves this recommendation, then the CPR report will no longer include *potential* rules that are being considered for the next 8 years.

updated to ensure that the Commission is receiving up-to-date information, including actions that have occurred since the last report (e.g., Commission direction to discontinue a rule, etc.) (see Enclosure 3 for a sample rule entry). ACRS and CRGR will receive a copy of the RAP. Updating the format, content, and schedule of the RAP would mean fewer review cycles and would result in a single, internal rulemaking report with up-to-date information. The RAP would be generated from the data in the CPR report; therefore, the RAP would not require a Commission vote, because any nonroutine, nondelegated rule included in the RAP would have already been approved through the streamlined rulemaking plan process described above (see the proposed timeline in Enclosure 4).

Independent Committee Review of Rulemaking

Reaffirmation of the Commission's 2006 Direction[25] with Respect to CRGR and ACRS Review of Proposed Rules. In 2006, after the Commission approved the waiver of CRGR review of proposed rulemaking packages, the charter was revised to eliminate the requirement that CRGR review proposed rulemaking packages. However, the revised (current) charter still allows an office director or the EDO to request CRGR review of a proposed rule. As a result of the discussions with CRGR leadership and an assessment of the role of that committee in reviewing proposed rules, the NRC staff does not propose expanding the role of CRGR to include the mandatory review of all proposed rules. Conversely, and as explained below, the staff would plan to work with the CRGR to develop criteria for triggering CRGR review of a proposed rule.

The NRC staff also examined whether ACRS review of proposed rulemaking packages would provide substantial benefits. As a result, the NRC staff and ACRS determined that there is no need to change the ACRS review requirement during the proposed rule stage. The ACRS focuses on the significant proposed and final rules that address technical issues. Currently, rulemaking packages in the earliest stage of development come to ACRS under three circumstances: (1) ACRS review is required by law (e.g., reactor design certification rules); (2) the Commission directs the review; or (3) the committee uses its own discretion to direct the review. In consultation with the ACRS, the staff did not identify any instances since 2006 where the ACRS did not review a significant rule that fell within its purview. Consequently, the NRC staff and ACRS leadership have concluded that the existing approach for ACRS review of rulemaking packages is effective and efficient. Therefore, the NRC staff does not recommend expanding the role of ACRS.

Involving the CRGR in Resource Allocation and Rule Prioritization Would Duplicate Efforts Undertaken by the Rulemaking Coordinating Committee. The NRC staff analyzed whether the CRGR charter should be amended to alter its role in the agency's rulemaking process and thereby potentially better inform the agency's allocation of resources and prioritization of activities.

Currently, the RCC, under the direction of the Office of the Executive Director for Operations, coordinates the process by which office directors, through their RCC representatives, allocate rulemaking resources and prioritize rulemaking activities by business lines. The RCC, chaired by ADM, consists of representatives from the primary offices involved in rulemaking. During the

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25 SRM on COMNJD-06-0004/COMEXM-06-0006 (ADAMS Accession No. ML061510316).

annual prioritization process, the RCC considers many aspects, including risk insights (where available) and other information obtained through consultation with subject matter experts. Because many rulemaking requests (such as design and cask certifications) come from the regulated community, the NRC staff also evaluates these requests in setting its rulemaking priorities and allocating its resources. The RCC will continue to use the management review process to ensure that the CPR report provided to the Commission reflects agency priorities and results in an efficient rulemaking process.

Office directors and the EDO are briefed semiannually by the RCC about the allocation of rulemaking resources and rulemaking prioritizations before the budget request is submitted to OCFO. Members of the CRGR are also represented on the RCC. Therefore, the NRC staff believes that CRGR involvement in the agency's allocation of rulemaking resources and prioritization of rulemaking activities would result in minimal benefits. CRGR involvement would be duplicative, could result in unnecessary delays, and is unlikely to affect the allocation of resources and prioritization of rulemaking activities. Therefore, the NRC staff does not recommend expanding the role of CRGR to involve it in resource allocation or rule prioritization.

Pending Improvements to CRGR Process for Reviewing Rulemakings. Although the current CRGR charter does not require CRGR review of proposed rulemaking packages, it allows the office director or the EDO to request CRGR review of a proposed rule. As an independent, collegial body, CRGR could potentially add value to the rulemaking process by focusing on the staff practices for facility-specific backfitting management and assesses the adequacy of management direction, programmatic and administrative controls, interoffice coordination for processing backfits, and staff guidance and training.

Since October 2007, subsequent to the Commission's approval of the removal of CRGR from the review of rulemaking packages, the NRC staff has not requested CRGR review of any proposed rule packages. This may have been caused in part by a lack of guidance or criteria available to assist the EDO or office directors in deciding when to request CRGR review or involvement in a particular proposed rulemaking.

The NRC staff is not aware of instances in which CRGR review would have resulted in different outcomes. However, given the agency's greater focus on ensuring backfitting and regulatory analysis reviews are conducted appropriately and in light of the recent Commission direction on qualitative factors, CRGR review of certain rulemaking packages could be beneficial. Consequently, the CRGR has begun addressing this gap in its operating procedures and the NRC staff's implementing procedures by developing appropriate criteria and guidance. The criteria will provide clarity on when the NRC staff would request CRGR review of proposed rules.

The CRGR anticipates providing the guidance and criteria to the staff within 4 months after the issuance of the SRM to this paper. Staff will examine the need for further process enhancements regarding CRGR after it has been able to assess lessons-learned and feedback from implementation and use of the new guidance and criteria. The development of new CRGR criteria is presented here for information and requires no Commission action.

ACRS and CRGR Will Receive Copies of updated RAP. The NRC staff will include ACRS and CRGR on the distribution for the CA note submitting the RAP to the Commission. This will

give ACRS and the CRGR the opportunity to request briefings early in the rulemaking process. It will also provide the office directors and the EDO an opportunity to request CRGR review of the individual proposed rulemaking packages early in the process.

RECOMMENDATIONS:

The NRC staff recommends that the Commission approve the following:

1. Approve the institution of a streamlined rulemaking plan requirement in the form of a SECY paper that would request Commission approval to initiate any nonroutine, nondelegated rulemaking.
   a. Approve the template for the streamlined rulemaking plan.
   b. Rescind the delegation of authority in the SRM on COMNJD-06-0004/COMEXM-06-0006, "Streamlining the NRR Rulemaking Process," dated May 31, 2006 (ADAMS Accession No. ML061510316), that gave the Director of NRR the discretion to waive (in consultation with the General Counsel) the development and submission of rulemaking plans.
   c. Rescind the delegation of authority in the SRM on SECY-07-0134, "Evaluation of the Overall Effectiveness of the Rulemaking Process Improvement Implementation Plan," dated October 25, 2007 (ADAMS Accession No. ML072980427), that gave the Director of FSME (now merged with NMSS) the discretion to waive (in consultation with the General Counsel) the development and submission of rulemaking plans.
2. Approve the requirement that staff submit a SECY paper to request Commission approval to discontinue any rulemaking.
3. Approve the requirement that staff submit to the Commission for approval any PRM determination that recommends rulemaking.
4. Approve submittal of the updated RAP as an enclosure to a CA note (W201100275) and move the due date for the annual submission of the RAP to May - June (W199500048).
5. Approve the inclusion of ACRS and CRGR on the distribution for the CA note submitting the RAP to the Commission.
6. Move the due date for the annual submission of the CPR process to the CFO in May - June, along with a CA Note to the Commission.
7. Reaffirm the Commission's 2006 Direction that CRGR and ACRS not expand their roles to routinely review proposed rules.
8. Determine that the CRGR not expand its role to become involved in resource allocation and rule prioritization.

COORDINATION:

This action has been coordinated with members of the RCC and participants from ACRS and CRGR. The OCFO has reviewed this paper for resource implications and has no objections. The OGC has no legal objection to this paper.

RESOURCES:

No additional resources are required to implement the recommendations.

/RA/
Victor M. McCree
Executive Director
for Operations

Enclosures:
1. Annotated FY2016—2017 CPR report
2. Template for streamlined rulemaking plan (based on a SECY template) and sample
3. Sample rule entry for the updated RAP
4. Timeline showing the submission of the updated RAP

This document has been redacted.

	List of Active Rulemaking Activities	SRM
	High	
	Operating Reactors	
1	American Society of Mechanical Engineers 2009-2013 Code Edition and Addenda Incorporation by Reference	SRM-SECY-00-0011
2	Defense against Common Mode Failures in Digital I&C Systems	No SRM. Reprioritized as a high-priority rulemaking activity at the OEDO's request. Commission approval obtained through the budgeting process.
3	Fitness for Duty: 2016/17 Health and Human Services (HHS) Guidelines Update	No SRM. High-priority rulemaking activity. Commission approval previously has been obtained through the budgeting process.
4	Enhanced Weapons, Firearms Background Checks, and Security Event Notifications	SRM-SECY-12-0125
5	Fitness-for-Duty: 2008 Health and Human Services (HHS) Guidelines Drug Panel Update	No SRM. High-priority rulemaking activity. Rulemaking would align the NRC's regulations with other Federal agencies (U.S. Department of Health and Human Services). Commission approval previously has been obtained through the budgeting process.
6	Incorporate by Reference IEEE 603-2009, Standard Criteria for Safety Systems for Nuclear Power Generating Stations	SRM-SECY-00-0011
7	Incorporation by Reference of Revisions of ASME Regulatory Guides (RG 1.84, Rev 37, and RG 1.147, Rev 18, and 1.192, Rev. 2)	SRM-SECY-00-0011
8	Mitigation Strategies for Beyond Design Basis Events	SRM-SECY-11-0137
9	Part 50.55a - IBR of 2014 Edition ASME Operations and Maintenance Code	SRM-SECY-00-0011
10	Part 50.55a - IBR of 2015 Edition ASME Boiler & Pressure Vessel Code	SRM-SECY-00-0011
11	Part 50.55a - IBR of 2016 ASME Operations and Maintenance Code Edition	SRM-SECY-00-0011
12	Part 50.55a - IBR of 2017 ASME Boiler Pressure Vessel Code Edition	SRM-SECY-00-0011

This document has been redacted.

13	Part 50.55a - IBR of Code Case Regulatory Guides - RG 1.84, Rev 39, and RG 1.147, Rev 20, and 1.192, Rev. 4	SRM-SECY-00-0011
14	Part 50.55a - IBR of Code Case Regulatory Guides - RG 1.84, Revision 38; RG 1.147, Revision 19; and RG 1.192, Revision 3	SRM-SECY-00-0011
15	Performance-Based Emergency Core Cooling System Acceptance Criteria	SRM-SECY-02-0057
16	Regulatory Improvements for Power Reactors Transitioning to Decommissioning	SRM-SECY-14-0118
17	Risk-Informed Changes to Loss-of-Coolant Accident Technical Requirements	SRM-SECY-02-0057 and SRM-SECY-04-0037
	New Reactors	
18	Advanced Power Reactor (APR)-1400 (KEPCO) Design Certification	Subpart B, "Standard Design Certifications," of 10 CFR 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," lays out the requirements for the Commission to issue rules granting standard design certifications.
19	Clarifying Requirements in Part 21, Reporting of Defects and Noncompliance	No SRM. Staff informed the Commission of its plans to start rulemaking in SECY-11-0135. This SECY documented two OIG audits that recommended 10 CFR part 21 rulemaking. This rulemaking affects all program offices of NRO, NMSS, and NRR. Commission approval previously has been obtained through the budgeting process.
	Materials Users	
	Fuel Facilities	
20	Cyber Security for Fuel Facilities	SRM-SECY-14-0147
21	Enhanced Weapons -- Section 161A authority	SRM-SECY-08-0050A; SRM-SECY-12-0125
22	Physical Protection for Category I, II, and III Special Nuclear Material	[redacted] SRM-SECY-09-0123
	Spent Fuel and Transportation	
23	Amendments to List of Approved Spent Fuel Storage Cask (1) [This is a placeholder for an annual recurring rule. The NRC publishes a varying number of these rules each year.]	SRM-SECY-98-188 SECY-99-069 SECY-00-0018 SECY-01-0177 SECY-01-0226
24	Independent Spent Fuel Storage Installation Security Requirements for Radiological Sabotage	SRM-SECY-07-0148

This document has been redacted.

	Corporate Support	
25	Revision of Fee Schedules: Fee Recovery for FY 2016	Non-discretionary and routine. The rulemaking must be issued every year to satisfy the requirements of OBRA-90 regarding fee collection. The staff submits each year a policy paper to the Commission.
	Decommissioning & Low-Level Waste	
26	Low-Level Radioactive Waste Disposal	SRM-SECY-08-0147
	Medium	
	Operating Reactors	
27	Non-Power Reactor (NPR) License Renewal	SRM-SECY-09-0095, SRMM09-0811, and SRMSECY-08-161
28	[redacted]	[redacted]
	New Reactors	
29	Dose Assessments for Radioactive Effluents	SRM-SECY-12-0064
30	Financial Qualifications for Reactor Licensing	SRM-SECY-13-0124
31	Emergency Preparedness Requirements for Small Modular Reactors	SRM-SECY-15-0077
	Materials Users	
32	Cyber Security for Byproduct Material Licensees	No SRM but was included in cyber roadmap sent to the Commission. The staff is submitting a memo to extend the initial scoping memo to fall of 2016. As a medium priority rule, staff will only start working on this rulemaking after submitting a SECY and receiving Commission direction in an SRM.
33	Part 37 Physical Protection of Byproduct Material Follow-on Rule	No SRM, but this was identified by staff with Commission support. As a medium priority rule, staff will only start working on this rulemaking after submitting a SECY and receiving Commission direction in an SRM. Staff is currently preparing a COMSECY requesting approval to initiate rulemaking.
34	Polymer (Polycarbonate or Polyester) Track Etched (PCTE) Membranes	[redacted]
35	Radiation Protection	SRM-SECY-12-0064. A CA note was recently sent up in advance of a COMSECY that will recommend discontinuing this rulemaking.
	Fuel Facilities	
36	Amendments to Material Control and Accounting	SRM-SECY-08-0059

This document has been redacted.

	Regulations	
37	Spent Fuel Reprocessing	SRM-SECY-0093
	Spent Fuel Storage and Transportation	
38	Part 71, Compatibility with IAEA Transportation Standards, SSR-6, 2012 Edition	No SRM. The NRC periodically conducts rulemaking to be compatible with IAEA. Would be coordinated with DOT so that final rule published at same time as DOT final rule. As a medium priority rule, staff will only start working on this rulemaking after submitting a SECY and receiving Commission direction in an SRM.
	Corporate Support	
39	10 CFR Part 110, Export and Import of Nuclear Equipment and Material; Updates and Clarifications	No SRM. A SECY paper is being prepared for the Commission.
40	Adjustment of Civil Penalties for Inflation (Parts 2 and 13)	No SRM. This is statutorily required and is a non-discretionary rulemaking activity.
41	Miscellaneous Administrative Rulemaking [This is a placeholder for annual recurring rule.]	No SRM. Annual administrative rule.
42	Miscellaneous Technical Correction [This is a placeholder for annual recurring rule.]	No SRM. Annual administrative rule.
43	U.S. Nuclear Regulatory Commission Acquisition Regulation (NRCAR) – 48 CFR Chap. 20	No SRM. Administrative rule to align NRC acquisitions regulations with 48 CFR Chapter 20, "Nuclear Regulatory Commission."
45	Variable Annual Fee Structure for Small and Medium Sized Reactors	SRM-15-0044
	Decommissioning & Low-Level Waste	
46	Groundwater Protection In Situ Leach Uranium Recovery Facilities	SRM- CMJSM06-0001
	Low	
	Decommissioning & Low-Level Waste	
47	Dodd-Frank Act of 2010 Rulemaking	No SRM. Nondiscretionary. As a low priority rule, staff will only start working on this rulemaking after submitting a SECY and receiving Commission direction in an SRM.

FOR: The Commissioners

FROM: [INSERT NAME]
Executive Director for Operations

SUBJECT: RULEMAKING PLAN ON [INSERT TOPIC]

In Staff Requirements Memorandum SECY-15-XXXX, "[insert title]," dated Month XX, 2015, the Commission approved the staff's recommendation for a new requirement that the staff must develop a streamlined Rulemaking Plan (with a SECY paper format) to initiate a new rulemaking and begin expending resources. Accordingly, the staff requests approval to begin work on and to budget for a rulemaking about [insert brief topic]. This rulemaking would [insert a brief description of the proposed change in regulation].

Title: Rulemaking Title

Regulation: Title 10 of the Code of Federal Regulations (10 CFR) Part X

Estimated Schedule:
Initiate regulatory basis phase–Month, Year
Complete regulatory basis— Month, Year
Complete proposed rule— Month, Year
Complete final rule— Month, Year
Complete rulemaking action— Month, Year

Preliminary Priority: [select one:] High/Medium/Low priority rulemaking activity using the Common Prioritization of Rulemaking (CPR) prioritization methodology. Rule priority can change over time. Common reasons for a change in priority are new Commission or senior management direction or changes in the rulemaking scope.

CONTACTS: Name, OFF/DIV
301-XXX-XXXX

Enclosure 2

Background: [summarize (2-3 paragraphs may be sufficient) the reason to pursue rulemaking. Describe any internal or external drivers for rulemaking.]

Description and Scope: [briefly describe (1-2 paragraphs may be sufficient) the regulatory change including: why the current regulation needs to change, the number and type of affected regulated entities, CFR parts that would change]

Relationship of the Work to the NRC's Strategic Plan: [briefly describe (1-2 paragraphs may be sufficient): the impact on the Safety/Security goals, impact on regulatory efficiency; specify any new mandate, statute, Executive order, international treaty, etc., that is driving the rulemaking]

Costs and Benefits: During the development of the regulatory basis, the staff will evaluate the potential benefits and costs of the proposed change in regulation.

Backfitting and Issue Finality: The staff's expectation is that the rule will [select one] be necessary for adequate protection/ will analyze costs and benefits under backfit regulations/ or backfit regulations do not apply. [Add a brief explanation if the staff expects an adequate protection argument or if backfit regulations do not apply.] [NOTE: a backfit evaluation is not required at this stage.]

Guidance: The staff estimates that X guidance document(s) will be updated in parallel with the rulemaking: [list the guidance documents]

Resources: See Enclosure 1

If the Commission approves initiation of rulemaking, the staff will add the rule to the CPR during the next budget formulation cycle.

Recommendations

The staff requests permission to initiate rulemaking and to add the rulemaking to the CPR.

Coordination

The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections. The Office of General Counsel has reviewed this paper and has no legal objections.

[INSERT NAME]
Executive Director
for Operations

Enclosure:
Resources

Comment [Guidance1]: Consider answering these questions as appropriate for the particular potential rulemaking:
1.What is the current regulation? 2.What is the problem with the current regulation?
3. What is the high-level aim of the rulemaking/regulatory change? For example, would the rule enhance safety and/or reduce regulatory burden?
4. What information about the policy issue is already available? This might include previous Commission direction, statutes, public workshop etc.

Comment [Guidance2]: Provide more specific description of the regulatory change than the background.

1.What CFR part(s) would change?
2.Who is affected?
3. What is the benefit of the regulatory change?
4. What is the benefit of using the rulemaking process?
5. If the rule would not reduce burden, what types of additional costs might there be?

Note: Detailed cost/benefit analysis is not expected at this stage. Regulatory Analysis will be accomplished during the regulatory basis phase.

Comment [Guidance3]: How does the proposed rulemaking relate to the 4 factors in the Common Prioritization of Rulemaking prioritization method?

1.How significant of an impact would the regulat change have on safety or security? 2.How significant of an impact would the regulatory cha have on efficient and effective regulation?
3.Has any external organization (Congress, the White House, other Federal agency, other State agency, foreign government, etc.) requested or directed the regulatory change? 4.What level an type of public participation is expected?

This template assumes that new accepted petitions for rulemaking are addressed through a different process.

Comment [Guidance4]: Specify what the expected benefits are expected to be and at what cost.

Background: [summarize (2-3 paragraphs may be sufficient) the reason to pursue rulemaking. Describe any internal or external drivers for rulemaking.]

Description and Scope: [briefly describe (1-2 paragraphs may be sufficient) the regulatory change including: why the current regulation needs to change, the number and type of affected regulated entities, CFR parts that would change]

Relationship of the Work to the NRC's Strategic Plan: [briefly describe (1-2 paragraphs may be sufficient): the impact on the Safety/Security goals, impact on regulatory efficiency; specify any new mandate, statute, Executive order, international treaty, etc., that is driving the rulemaking]

Costs and Benefits: During the development of the regulatory basis, the staff will evaluate the potential benefits and costs of the proposed change in regulation.

Backfitting and Issue Finality: The staff's expectation is that the rule will [select one] be necessary for adequate protection/ will analyze costs and benefits under backfit regulations/ or backfit regulations do not apply. [Add a brief explanation if the staff expects an adequate protection argument or if backfit regulations do not apply.] [NOTE: a backfit evaluation is not required at this stage.]

Guidance: The staff estimates that X guidance document(s) will be updated in parallel with the rulemaking: [list the guidance documents]

Resources: See Enclosure 1

If the Commission approves initiation of rulemaking, the staff will add the rule to the CPR during the next budget formulation cycle.

Recommendations

The staff requests permission to initiate rulemaking and to add the rulemaking to the CPR.

Coordination

The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections. The Office of General Counsel has reviewed this paper and has no legal objections.

[INSERT NAME]
Executive Director
for Operations

Enclosure:
Resources

ADAMS Accession Nos.: MLXXXXXXXXX (Package) ML XXXXXXXXX (Memorandum)
MLXXXXXXXXX (Resource Enclosure)

OFFICE					
NAME					
DATE					
OFFICE					
NAME					
DATE					

OFFICIAL AGENCY RECORD

Comment [Guidance1]: Consider answering these questions as appropriate for the particular potential rulemaking:
1. What is the current regulation?
2. What is the problem with the current regulation?
3. What is the high-level aim of the rulemaking/regulatory change? For example, would the rule enhance safety and/or reduce regulatory burden?
4. What information about the policy issue is already available? This might include previous Commission direction, statutes, public workshops, etc.

Comment [Guidance2]: Provide more specific description of the regulatory change than the background.

1. What CFR part(s) would change? 2. Who is affected?
3. What is the benefit of the regulatory change?
4. What is the benefit of using the rulemaking process?
5. If the rule would not reduce burden, what types of additional costs might there be?

Note: Detailed cost/benefit analysis is not expected at this stage. Regulatory Analysis will be accomplished during the regulatory basis phase.

Comment [Guidance3]: How does the proposed rulemaking relate to the 4 factors in the Common Prioritization of Rulemaking prioritization method?

1. How significant of an impact would the regulatory change have on safety or security? 2. How significant of an impact would the regulatory change have on efficient and effective regulation?
3. Has any external organization (Congress, the White House, other Federal agency, other State agency, foreign government, etc.) requested or directed the regulatory change? 4. What level and/or type of public participation is expected?

This template assumes that new accepted petitions for rulemaking are addressed through a different process.

Comment [Guidance4]: Specify what the expected benefits are expected to be and at what cost.

EXAMPLE

FOR: The Commissioners

FROM: Victor M. McCree
Executive Director for Operations

SUBJECT: RULEMAKING PLAN ON REACTOR VESSEL MATERIAL SURVEILLANCE PROGRAM ENHANCEMENTS

In Staff Requirements Memorandum SECY-15-XXXX, "[insert title]," dated Month XX, 2015, the Commission approved the staff's recommendation for a new requirement that the staff must develop a streamlined Rulemaking Plan (with a SECY paper format) to initiate a new rulemaking and begin expending resources. Accordingly, the staff requests approval to begin work on and to budget for a rulemaking about testing standards for power reactors under the material surveillance program. This rulemaking would incorporate the latest editions of consensus standards to allow licensees to use modern testing standards.

Title: Revisions to Reactor Vessel Material Surveillance Program Requirements

Regulation: Title 10 of the Code of Federal Regulations (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities," Appendix H, "Reactor Vessel Material Surveillance Program Requirements"

Estimated Schedule: Initiate regulatory basis phase—December 2015
Complete regulatory basis—October 2016
Complete proposed rule—March 2018
Complete final rule—June 2019
Complete rulemaking action—November 2019

Preliminary Priority: Medium priority rulemaking activity using the Common Prioritization of Rulemaking (CPR) prioritization methodology. Rule priority can change over time. Common reasons for a change in priority are new Commission or senior management direction or changes in the rulemaking scope.

CONTACTS: Jane Smith, NRR/DE
301-415-1111

Background:

Appendix H to 10 CFR Part 50 requires licensees to have reactor vessel (RV) material surveillance programs to monitor changes in fracture toughness properties of the RV materials adjacent to the reactor core. The U.S. Nuclear Regulatory Commission (NRC) requires licensees to periodically test irradiated material specimens from test capsules in RVs to evaluate changes in RV material fracture toughness.

The current version of 10 CFR Part 50, Appendix H, requires RV surveillance programs to include Charpy impact and tensile test specimens from welds, base metal, and the weld heat affected zone (HAZ) materials. However, the data generated from testing HAZ specimens is not useful for predicting RV material embrittlement. Through the rulemaking process the NRC staff would evaluate eliminating the requirement for testing HAZ specimens, which may result in eliminating the unnecessary financial and radiation exposure burden associated with this testing.

The rulemaking would also reevaluate the withdrawal schedule for design of surveillance programs in new plants whose RVs have not yet been procured. The existing requirements are such that new reactors must plan on withdrawing and testing a surveillance capsule during their first cycle of operation. Testing of specimens exposed to such low levels of irradiation does not yield meaningful data and exposes plant workers and material test technicians to recordable amounts of unnecessary radiation. During rulemaking, the NRC staff would evaluate incorporation of the latest edition of International standard ASTM E-185, "Standard Practice for Design of Surveillance Programs for Light-Water Moderated Nuclear Power Reactor Vessels," which does not require testing until test specimens accumulate one-fourth of the estimated end-of-license fluence for the RV.

Description/Scope:

The major objective of revising 10 CFR Part 50, Appendix H, is to incorporate the latest edition of both ASTM Standards E-185 and E-2215, "Standard Practice for Evaluation of Suveillance Capsules from Light-Water Moderated Nuclear Power Reactor Vessels." There are a number of optional features in ASTM E-185 that would permit future licensees to significantly improve future surveillance programs by allowing them to use more advanced test specimens. Since ASTM E-185 applies only to program design, which occurs before initial plant operation, the proposed change would not apply to any currently operating plants' RVs or to any RVs for plants currently under construction. For this reason, previous versions of E-185 published since E-185-82 (i.e., -98 or -02) are not required to be incorporated into a revision of Appendix H, because they are not applicable to any RVs. ASTM E-2215 would be used by all operating plants and would provide the most modern testing standards available.

The benefits of changing the regulation include the following:

1) Licensees may be able to stop expending resources and accumulating dose to generate data that may have little engineering or safety nexus;

2) Licensees and NRC staff resources to prepare, submit, and review requests for extension of time to submit capsule reports may be reduced;
3) The regulation would incorporate the most up-to-date version of referenced consensus standards;
4) Surveillance program guidance for license renewal and subsequent license renewal would be clarified.

Relationship of the Work to the NRC's Strategic Plan:

The NRC staff expects that the rulemaking would have a low impact on the safety goal of the NRC's Strategic Plan mostly because licensees may accumulate lower occupational dose in the process of collecting test specimens. The most significant impact of the rulemaking would be to enhance regulatory effectiveness by reducing the number of requests licensees would submit for extensions of time to submit capsule reports. The rulemaking would also incorporate the most up-to-date version of referenced consensus standards and clarify surveillance program guidance for license renewal. This rulemaking is expected to receive significant public interest because of its potential to reduce regulatory burden.

Costs and Benefits

During the development of the regulatory basis, the staff will evaluate the potential benefits and costs of the proposed change in regulation.

Guidance

The staff expects that one guidance document will be updated in parallel with the rulemaking: Regulatory Guide 1111, "Fracture Toughness Testing of Reactor Vessels."

Resources

See Enclosure 1

If the Commission approves initiation of rulemaking, the staff will add the rule to the CPR during the next budget formulation cycle.

Recommendations

The staff requests permission to initiate rulemaking and to add the rulemaking to the CPR.

Coordination

The Office of the Chief Financial Officer has reviewed this paper for resource implications and concurs. The Office of General Counsel has reviewed this paper and has no legal objections.

Victor M. McCree
Executive Director
for Operations

Enclosure:
Resources

This document has been redacted.

Updated Rulemaking Activity Report (RAP)
Sample Rule Entry
-1-

General Rule Information								Budget				
Priority	Rule Title	CFR Part	Business Line	Rulemaking Office	Docket ID	PRM No.	RIN No.	Office	FY16		FY17	
									FTE	$K	FTE	$K
High	Mitigation Strategies for Beyond Design Basis Events	50, 52	Operating Reactors	NRR	NRC-2011-0189, NRC-2014-0240	PRM-50-96, PRM-50-97, PRM-50-98, PRM-50-100, PRM-50-101, and PRM-50-102	AJ49	NRO	1.4	0	[redacted]	[redacted]
								NRR	2.6	325	[redacted]	[redacted]
								NSIR	1	83	[redacted]	[redacted]
								OGC	0	0	[redacted]	[redacted]
								RES	0.4	0	[redacted]	[redacted]
								Total	5.4	408	[redacted]	[redacted]

Status Update Since Last Report

In SRM-SECY-15-0065, dated August 27, 2015, the Commission approved publication of the draft proposed rule in the *Federal Register* subject to the removal of the proposed requirements for Severe Accident Management Guidelines (SAMGs)(10 CFR 50.155(b)(3)) and the proposed design requirements for new reactor applicants (10 CFR 50.155(d)). As a consequence, the estimated budget resources required for this rulemaking were reduced by [redacted] FTE and [redacted] K in FY 17. The proposed rule was published in the *Federal Register* on XX/XX/XXXX.

In FY2016 and FY2017 staff will review, analyze, and prepare responses to any comments received on the proposed rule. Based on the staff's resolution of public comments, the final rule a will be revised and provided to the Commission in December 2016.

Last Updated: XX/XX/XXXX

Abstract

The purpose of this rulemaking is to enhance mitigation strategies for nuclear power reactors for beyond-design-basis external events. This rulemaking addresses recommendations from the Near-Term Task Force (NTTF) related to station blackout, spent fuel pool long term cooling, and emergency preparedness (NTTF recommendations 4, 7, 8, and portions of 9, 10, and 11). In staff requirements memorandum (SRM)-SECY-11-0124, the Commission directed the staff to initiate the station blackout rulemaking as a high-priority activity. The staff's proposal is intended to produce a more seamless accident response capability that includes emergency operating procedures, the newly imposed strategies and guidelines for beyond-design-basis external events, severe accident management guidelines, and the extensive damage mitigation guidelines. In SRM-SECY-14-0046, the Commission approved the consolidation of the rulemaking activities. The rulemaking will make generically applicable the requirements in the Mitigation Strategies Order EA-12-049 and Spent Fuel Pool Instrumentation Order EA-12-051 from 2012. This rulemaking will partially address Petition for Rulemaking (PRM)-50-96 for long-term cooling capabilities in the event of a solar storm. Additionally, this rule fully addresses PRMs 50-97, 50-98, 50-100, 50-101, and 50-102.

Priority Justification

The rule scores 45 points (20, 10, 10, 5) because of the following reasons: A) Significant contributor toward the safety goal (strategies 1 and 5); B) Significant contributor toward the regulatory effectiveness goal (strategies 1 and 2); C) Commission direction in SRM-SECY-11-0124, SRM-SECY-11-0137, and SRM-SECY-14-0046; also a Congressional priority; and D) Partially addresses PRM-50-96 and addresses five other PRMs with significant public interest following the Fukushima event.

Enclosure 3

This document has been redacted.

Updated Rulemaking Activity Report (RAP)
Sample Rule Entry
-2-

Target Completion Dates				
Rule Initiation	**Regulatory Basis**	**Proposed Rule to EDO/Commission**	**Final Rule to EDO/Commission**	**Final Rule Published**
12/15/2011	07/23/2013	04/30/2015	12/16/2016	12/01/2017

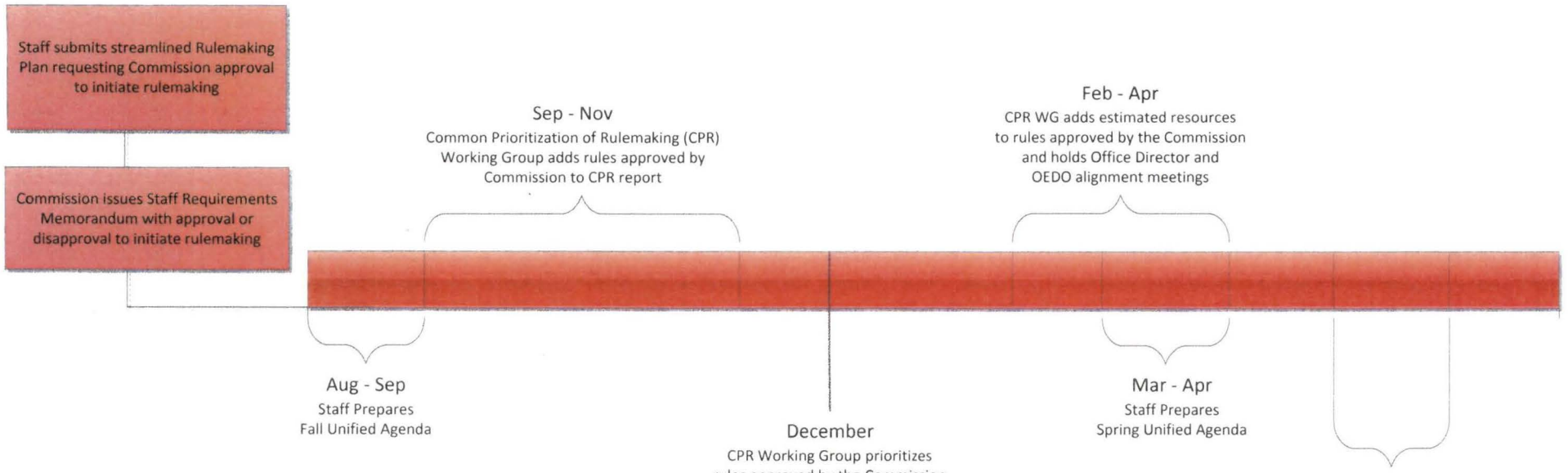
Milestones		
Milestone Date	**Document**	**Milestone**
12/15/2011	**SRM-SECY-11-0137**	**The Commission approved beginning activities for rulemaking.**
03/20/2012	77 FR 16175	Advance notice of proposed rulemaking published.
04/25/2012	N/A	Public meeting held.
05/04/2012	N/A	Close of public comment period.
01/25/2013	COMSECY-13-0002	The staff recommended consolidating the NTTF Recommendations 4 and 7 rules into one rulemaking.
03/04/2013	SRM-CMSY13-0002	The Commission approved combining the NTTF Recommendations 4 and 7 rules into one rulemaking.
04/10/2013	78 FR 21275	Draft regulatory basis and draft rule concepts issued for public comment.
05/28/2013	N/A	Close of public comment period.
07/23/2013	**78 FR 44035**	**Regulatory basis published in the *Federal Register* (FR).**
02/21/2014	N/A	Conceptual construct of consolidated preliminary proposed rule language issued.
07/09/2014	SRM-SECY-14-0046	The Commission approved combining the NTTF Recommendations 4 and 7 rulemaking with the Recommendation 8 rulemaking.
08/26/2014	N/A	Staff conducted a public meeting to discuss draft proposed rule language.
03/16/2015	N/A	Staff met with The Office of the Advisory Committee on Reactor Safeguards (ACRS) Fukushima subcommittee on the proposed rule.
04/09/2015	N/A	Staff met with ACRS full committee on the proposed rule.
05/06/2015	N/A	Staff met with ACRS Fukushima subcommittee on the draft guidance.

This document has been redacted.

Updated Rulemaking Activity Report (RAP)
Sample Rule Entry

06/10/2015	N/A	Staff met with ACRS Fukushima subcommittee on the draft guidance.
04/30/2015	**SECY-15-0065**	**Proposed rule provided to the Commission.**
07/09/2015	N/A	Staff met with the Commission on the proposed rule and associated guidance.
08/27/2015	SRM-SECY-15-0065	The Commission approved publication of the draft proposed rule in the Federal Register subject to the removal of the proposed requirements for Severe Accident Management Guidelines (SAMGs)(10 CFR 50.155(b)(3)) and the proposed design requirements for new reactor applicants (10 CFR 50.155(d)).
10/16/2015	N/A	Proposed rule due to SECY for publication.
11/06/2015	N/A	Target date to publish proposed rule in the *Federal Register.*
01/15/2016	N/A	Staff plans to hold a public meeting.
02/01/2015	N/A	Estimated closure date for public comment period.
11/30/2016	N/A	Meeting with ACRS Subcommittee.
12/10/2016	N/A	Meeting with ACRS Full Committee..
12/16/2016	**N/A**	**Target date to submit final rule to the Commission.**
12/01/2017	**N/A**	**Target date to publish final rule in the *Federal Register.***

Timeline for Proposed Plan to Increase Commission Involvement in the Early Stages of Rulemaking



Enclosure 4