November 16, 2004

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: Luis A. Reyes ***/RA/***
Executive Director for Operations

SUBJECT: PLANNED SCHEDULE FOR COMPLETING THE 10 CFR 73.1 DESIGN BASIS THREAT (DBT) AND 10 CFR 73.55/PART 73 APPENDIX B RULEMAKINGS

The purpose of this memorandum is to inform you of the staff's planned schedule to amend the 10 CFR 73.1, 73.55, and Part 73 Appendix B requirements consistent with the direction provided in the August 23, 2004, staff requirements memorandum (SRM) for COMSECY-04-0047, "Status of Security Related Rulemaking."

On July 19, 2004, the staff issued a memorandum titled "Status of Security-Related Rulemaking" to inform the Commission of plans to close two longstanding security-related actions and replace them with a comprehensive rulemaking plan to modify physical protection requirements for power reactors. This memorandum described rulemaking efforts that were preempted by the terrorist activities of September 11, 2001, and summarized the security-related actions taken following the attack. In response to this memorandum, the Commission directed the staff, in the August 23, 2004, SRM, to forego the development of a rulemaking plan and provide a schedule, in conjunction with OGC, for the completion of 10 CFR 73.1, 73.55, and Part 73 Appendix B rulemakings by November 15, 2004.

The planned major milestones for the subject rulemakings that align 10 CFR 73.1, 73.55, and Part 73 Appendix B with the post-September 11, 2001, security Orders are attached. To facilitate the use of available resources and to provide the DBT rulemaking on the most expeditious schedule possible, the staff intends to divide the project into two separate rulemakings. Namely, the DBT rulemaking and the larger scope security requirements rulemaking.

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DBT RULEMAKING:

A revision to 10 CFR 73.1 is being developed on an expedited basis with a proposed rule package delivery date of June 2005. Draft guidance and implementing documents, as needed, will be developed during the development of the proposed rule and will be available with the proposed rule package. The staff intends to develop a proposed rule that includes the DBT for both radiological sabotage (power reactors) and theft and diversion (Category 1 fuel cycle facilities).

The following assumptions were made in the development of the schedule:

- The Advisory Committee on Reactor Safeguards (ACRS) will not review this rule. This is based on the staff's understanding of Commission guidance regarding ACRS activities provided in the SRM dated October 31, 2003, "Staff Requirements - Meeting with Advisory Committee on Reactor Safeguards."

- The regulatory analysis/backfit analysis will be conducted using the current requirements imposed by Orders as the baseline for the analysis.

- The Committee to Review Generic Requirements (CRGR) review will be deferred until final rulemaking.

- The rule language will describe the DBT in general terms, and specific details will be maintained in adversary characteristics documents which will be controlled as safeguards information or classified information, as appropriate.

- A petition for rulemaking, 73-12, filed by the Committee to Bridge the Gap, will be considered during this rulemaking.

The expedited timeline is considered reasonable because of the significant amount of work that was done in the development and implementation of the existing Orders.

SECURITY REQUIREMENTS RULEMAKING:

This rulemaking effort represents a larger scope which the staff considers necessary to incorporate the requirements mandated by the power reactor security Orders (Specifically: EA-02-026 "Interim Compensatory Measures (ICM) Order," dated February 25, 2002, EA-02-261 "Access Authorization Order," dated January 7, 2003, EA-03-086 "Design Basis Threat (DBT) Order," dated April 29, 2003, and EA-03-039 "Security Personnel Training and Qualification Requirements (Training) Order," dated April 29, 2003) and to provide alignment through conforming changes to other rules. This package will include proposed changes to 10 CFR 73.55 (Requirements), 73.56 (Access Authorization), 73.57 (Background Checks), 10 CFR 73 Appendix B (Personnel Criteria), Appendix C (Contingency Plans), and Appendix G (Reporting). The package will also require minor revisions to 10 CFR Part 72 (Independent Spent Fuel Storage Installation), 10 CFR 73.2 (Definitions), 10 CFR 50.54 (Conditions of Licenses), and others. Draft guidance and implementing documents, as needed, will be developed during the development of the proposed rule and will be available with the proposed rule package. The staff plans to deliver the proposed rule package to the Commission by February 2006. As part

of this effort, the staff will also examine implementation issues such as the need for guidance documents, changes in the enforcement policy, and a means for dispositioning the Orders.

All of the major changes listed above were included in the power reactor security Orders, with the exception of Appendix G. Increased reporting of security events was requested by NRC in safeguards advisories following the September 11 attacks, and has been implemented by licensees. The staff considers the increased reporting an important part of NRC's monitoring strategy and therefore, concludes that consideration of associated changes to Appendix G is appropriate.

The following assumptions were made in the development of this schedule:

- ACRS will not review this rule. This is based on the staff's understanding of Commission guidance regarding ACRS activities provided in the SRM dated October 31, 2003, "Staff Requirements - Meeting with Advisory Committee on Reactor Safeguards."

- The regulatory analysis/backfit analysis will be constructed using the current requirements imposed by the Orders as the baseline for the analysis. This assumption emphasizes that only a few new requirements (e.g., potential changes to Appendix G), in addition to those already imposed by Orders, will be added through this rulemaking. However, for such requirements, a full regulatory and backfit analysis will be performed. OMB approval will be sought for the new information collection requirements.

- A CRGR review will be performed. This is considered appropriate, in part, due to the planned change to the Appendix G reporting requirements.

- The rule will be performance-based to the extent practical, and will draw upon the work developed for SECY-01-0101, "Proposed Rule Changes to 10 CFR 73.55," that is still applicable. SECY-01-0101 involved a performance based re-write of 10 CFR 73.55. Work on this change was stopped after September 11, 2001.

- The rulemaking will minimize the number of documents containing safeguards information. However, certain portions of the rules will require the use of general terms, with specific details in documents which will be safeguards information.

- The staff intends, to the extent possible, to provide for public participation during the development of the technical basis for the proposed rule as well as during the development of the draft and final rule and implementing guidance.

- A petition for rulemaking 73-11, filed by Three Mile Island Alert, will be considered during this rulemaking.

OGC has been consulted in the development of this document and has no legal objection.

The DBT rulemaking resource estimate is 2.5 full time equivalent (FTE) in NSIR, NRR, NMSS, and OGC for fiscal year (FY) 2005. The security requirements rulemaking resource estimate for NSIR, NRR, NMSS, and OGC is 3.5 FTE for FY 2005, and 1.5 FTE for FY 2006. Resources for the two rulemakings are included in the current budget. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

Attachment: As stated

cc w/attachment: SECY
OGC
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ACCESSION NO.: ML043060572 ***See previous concurrence**

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DATE	11/02/04	11/02/04	11/4/04	11/4/04	11/4/04		11/5/04

OFFICE	RPRP:PD		NMSS*	OGC	ADM	NSIR/PMPDAS	CFO
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OFFICE	OE	NRR	DEDH	DEDMRS	DEDR	EDO	
NAME	CNolan*	JDyer* CHaney /f/ w/edits	WKane	MVirgilio	EMerschoff	LAReyes	
DATE	11/4/04				11/16/04	11/06/04	

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Planned Rulemaking Schedule for 10 CFR Part 73

Schedule 1
Design Basis Threat Rule Package

Complete the DBT technical package (NSIR Lead)	12/01/04
Complete the Draft Federal Register notice of proposed rulemaking (and supporting documents) (NSIR/NRR/OGC in coordination with NMSS)	03/28/05
Complete interoffice review and concurrence of the DBT proposed rule package (OGC/NSIR/NMSS/NRR)	06/01/05
Proposed DBT rule package to Commission	06/14/05

Schedule 2
Power Reactor Security Requirements Rule Package

Complete the power reactor security requirements technical package (NSIR Lead)	05/03/05
Complete the Draft Federal Register notice of proposed rulemaking (and supporting documents) (NSIR/NRR/OGC, with NMSS coordination for conforming changes)	11/07/05
Complete interoffice review and concurrence of the proposed power reactor security requirements rule package(OGC/NSIR/NMSS/NRR)	02/08/06
Proposed power reactor security requirements rule package to Commission	02/21/06

Attachment