July 29, 2005

MEMORANDUM TO: Chairman Diaz
Commissioner Merrifield
Commissioner Jackzo
Commissioner Lyons

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

SUBJECT: REVISED SCHEDULE FOR COMPLETING THE POWER REACTOR SECURITY REQUIREMENTS RULEMAKING

The purpose of this memorandum is to inform you of a revision to the staff's plans to amend the 10 CFR 73.55, 73.56, Part 73 Appendix B, Appendix C, and Appendix G requirements to accommodate the addition of a requirement for licensees to consider the safety/security interface when making changes to their facility. Previous staff commitments for this rulemaking were provided to the Commission on November 16, 2004, in a memorandum titled "Planned Schedule for Completing the 10 CFR 73.1 Design Basis Threat (DBT) and 10 CFR 73.55/Part 73 Appendix B Rulemakings." This memorandum described the major milestones for the subject rulemakings to align 10 CFR 73.1, 73.55, and Part 73 Appendix B with the post-September 11, 2001, security orders in a manner consistent with the experience gained in implementing those orders.

On June 28, 2005, the Commission directed the staff in Staff Requirements Memorandum on SECY-05-0048, "Petition for Rulemaking on Protection of U.S. Nuclear Power Plants Against Radiological Sabotage (PRM-50-80)," to provide a proposed schedule for including requirements for the safety/security interface, with no undue delay to the existing schedule, into the ongoing power reactor security requirements rulemaking (10 CFR 73.55). As such, the staff plans to provide the proposed rule in February 2006, per the original schedule. However, because of the additional requirements for safety/security interface, combined with other factors described later in this memorandum, several adjustments to standard agency rulemaking practices will be necessary in order to provide the proposed rule by February 2006.

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Basis for the Schedule:

The addition of safety/security interface requirements, combined with schedule delays that had already been encountered in the development of this rulemaking package, will present challenges to meeting the original schedule. The challenges for this rulemaking effort include: 1) the need for close coordination across various offices to ensure that the rule accomplishes its desired objective; 2) the regulatory analysis for the safety/security interface is an additional requirement which exceeds the minimal regulatory analysis needed for the 10 CFR 73.55 rulemaking since the 73.55 rule requirements were to be compared primarily to the requirements previously imposed by order; and 3) since the safety/security interface involves reactor safety, the standard rulemaking process calls for an Advisory Committee for Reactor Safeguards (ACRS) review.

Beyond the addition of the safety/security interface requirements, other issues that impacted the original 73.55 rulemaking schedule include: 1) schedule challenges and resource limitations associated with conducting the 10 CFR 73.1 Design Basis Threat rulemaking in parallel with the security requirements rulemaking; and 2) NSIR emergent work activities impacted the staff's ability to complete the 10 CFR 73.55 technical basis package in accordance with the original schedule.

To meet the February 2006 rulemaking schedule, the staff has made the following adjustments:

1. The standard rulemaking process calls for interaction with the ACRS when proposed new requirements impact reactor safety. However, staff is contacting the ACRS to request deferral of its review of the safety/security interface requirements until the final stage.

2. For requirements already imposed by orders, the regulatory analysis/backfit analysis will be constructed using the current requirements imposed by the orders as the baseline for the analysis. The new safety/security interface requirements, as well as new reporting requirements included in Appendix G (imminent threat), and various minor additions to 10 CFR 73.55, will require a complete regulatory analysis and consideration of backfitting.

3. CRGR review will be deferred until the final rule stage. The standard rulemaking process calls for CRGR review of all new and revised regulatory requirements to assure that backfit requirements are met.

4. Stakeholder participation, other than through possible posting of draft proposed rule text on the NRC website, will not be included during development of the proposed rule. If draft proposed rule language is posted on the website, the staff will consider any stakeholder comments received when developing proposed rule language, but will not prepare formal responses to such comments. Stakeholder comments on the published proposed rule will be considered at the final rule stage, which meets the minimum statutory requirements for stakeholder involvement.

5. Regulatory guidance documents will be completed after publication of the final rule. Contractor support will be utilized to facilitate this effort.

6. Safety/security interface requirements will only be applied to operating power reactors as part of this rulemaking. NRR staff with knowledge and skill in specific areas pertaining to the interface between safety and security will be directed to focus on this high priority rulemaking.

7. Petition for Rulemaking 73-11, filed by Three Mile Island Alert, will not be considered during this rulemaking, contrary to the original plan. The standard timeframe for stakeholder comment and the additional staff burden for this Petition for Rulemaking would impact the schedule. Therefore, this petition will be resolved independently in separate Commission correspondence and a separate Federal Register Notice.

8. Access authorization enhancements involving the NRC's Demographic Data Project, for which the staff has been preparing a proposal, will not be included in this rulemaking.

9. Other security-related enhancements under staff consideration, such as access authorization enhancements involving identification of individuals seeking escorted access to licensed facilities, will not be included in this rulemaking.

Potential impacts of the pending energy legislation and associated amendments were not considered in the development of this schedule.

Resources:

The FY 2006 President's Budget includes 2 FTE and $235K for FY 2005 and 4.4 FTE and $305K for FY 2006. However, because of the additional requirements for safety/security interface, combined with other factors described above in this memorandum, an additional $330K and 2 FTE, along with several adjustments to standard agency rulemaking practices will be necessary in order to provide the proposed rule by February 2006. Subject to Commission's approval, these additional resources may be added as a part of the additional $21 million included in the House and Senate FY 2006 Energy and Water Development appropriation bills. In case these resources are not provided in the FY 2006 Appropriation Act, the additional resources could be funded from other budgeted activities through the add/shed process.

Impacts to ongoing FY 2005 NSIR activities will occur due to the development of the safety/security interface technical basis using available staff. The consequences of these impacts will be addressed in the periodic report to the Commission entitled "Status of the Agency's Significant Security Activities."

The staff plans to deliver the proposed rule to the Commission by February 2006, with the adjustments identified above. A revised milestone schedule is attached.

OGC has been consulted in the development of this document and has no legal objection. The Office of the Chief Financial Officer has reviewed this memorandum for resource implications and has no objections.

Attachment: As stated

cc w/attachment: SECY
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*see previous concurrence

OFFICE	DNS/RSS	SC:RSS/DNS	D:NSPPD/DNS	D:DNS/NSIR	D:NSIR	OCFO
NAME	RRasmussen:jph	SMorris*	VOrdaz*	GTracy*	RZimmerman*	LBarnett /f/*
DATE	7/ 15 /05	7/ 22 /05	7/ 25 /05	7/ 25 /05	7/ 26 /05	7/27/05

OFFICE	RPRP/NRR	OE	NMSS	OGC	ADM	DD:NSIR/PMDA
NAME	TReed*	CNolan*	JStrosnider*	STreby*	MLesar*	LSolander*
DATE	7/ 25 /05	7/ 18 /05	7/ 25 /05	7/ 22 /05	7/ 19 /05	7/ 15 /05

OFFICE			D:NRR	DEDMRS:EDO	DEDR:EDO	EDO
NAME			JEDyer*	MJVirgilio*	WFKane	LAReyes
DATE			7/ 25 /05	7/29 /05	7/29/05	7/29/05

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Revised Schedule for the
Power Reactor Security Requirements Rule Package*

Complete the power reactor security requirements technical package (NSIR Lead, with NRR/NMSS/OGC for safety/security interface)	~~05/03/05~~ 08/29/05
Complete the Draft Federal Register notice of proposed rulemaking (and supporting documents) (NRR Lead, NSIR/OGC, with NMSS coordination for conforming changes)	~~11/07/05~~ 12/21/05
Complete interoffice review and concurrence of the proposed power reactor security requirements rule package (NRR/NSIR/NMSS/OGC)	~~02/08/06~~ 02/14/06
Proposed power reactor security requirements rule package to Commission	~~02/21/06~~ 02/28/06

* Strikeout dates are those that were provided to the Commission in a memorandum dated November 16, 2004.

Attachment