

January 30, 2006

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations

Karen D. Cyr
General Counsel

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

SUBJECT: STAFF REQUIREMENTS - SECY-05-0203 - REVISED
PROPOSED RULE TO UPDATE 10 CFR PART 52, "LICENSES,
CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER
PLANTS"

The Commission has approved withdrawal of the previously published proposed rule and publication of this revised notice of proposed rulemaking, subject to the comments and changes noted below.

The staff (EDO and OGC) should give high priority to complete this rulemaking activity on schedule and provide the proposed final rule to the Commission no later than October 2006. To support this schedule, the staff may provide a proposed final rule to the Commission without review by the Committee to Review Generic Requirements. In a manner that supports the schedule, the staff should seek Advisory Committee on Reactor Safeguards feedback on technical issues, if any, during the public comment period.

Concurrently, the EDO and OGC must ensure that the three 10 CFR Part 73 security rulemakings are completed on schedule or earlier. Therefore, a strict plan and resources are to be established and managed to the set timetables for both the security and Part 52 rulemakings.

To facilitate stakeholder comments on the proposed rule, the staff should hold at least one public workshop as soon as practicable after the proposed rule is issued (within two to three weeks) to discuss the major proposed revisions and answer stakeholder questions. The staff should be open in its approach to the workshop and should seriously consider all comments and alternatives before preparing the final rule package.

The staff should solicit stakeholder comments on handling updates to environmental and emergency preparedness information, including an update to the early site permit (ESP) some time prior to submission of a COL application and other potential alternatives that contribute to the predictability and the flexibility of the process for updating environmental and emergency preparedness information in the ESP. In soliciting comments, the staff should be careful to recognize the distinctive nature of these two issues, that may necessitate potentially different alternatives.

In parallel with the issuance of the proposed rule, the staff should develop guidance to clarify the type of environmental information addressed by the 'new and significant' standard ("new and significant information on the site or design to the extent that the information differs from, or is in addition to, the information discussed in the ESP EIS").

The staff should solicit stakeholder comments on a potential requirement that Part 52 licensees update the PRA periodically throughout the life of the facility, perhaps on a schedule similar to the schedule for UFSAR updates.

The staff should solicit public comments on NEI's seven conforming changes as noted in the NEI letter dated December 14, 2005, so as to allow the agency to incorporate them in the final rule scheduled for October 2006, as appropriate.

The staff should ensure that the NEI comments made on the AP1000 Design Certification and that have general applicability are posed as questions in the Federal Register Notice in a manner that would allow the agency to incorporate them in the final rule scheduled for October 2006, as appropriate.

The staff should include a question in the statement of considerations that seeks public comment on adding a provision to the rule that would require COL applicants to submit a detailed schedule for completion of ITAAC at a specific point in time prior to fuel load.

The staff should also engage industry and public stakeholders to identify any generic regulatory process changes that could enhance the efficiency and effectiveness of preparation of COL applications in situations where a change to an applicable regulation may occur prior to completion of the staff's associated review.

The scope and methods of a PRA to be submitted should be addressed in guidance documents, not the regulations.

The language of the Atomic Energy Act does not explicitly require a mandatory hearing in connection with the issuance of a reactor manufacturing license. The staff should solicit comments on the need for mandatory hearings for issuance of manufacturing licenses, and modify the SOCs to clearly indicate that the Commission may consider changing this approach in the final rule. Should the Commission change its approach, an opportunity for hearing would still be provided, though a hearing would not then be mandatory. The staff should update the regulatory analysis to include the estimates of costs and benefits of providing a mandatory hearing for issuance of a manufacturing license.

The staff should revise 10 CFR 2.340 [initial decision in contested proceedings; immediate effectiveness of initial decision directing issuance of a CP or OL] to address (1) issuance of an ESP; (2) issuance of a COL; and (3) issuance of a finding pursuant to 10 CFR 52.103.

The staff should include in 10 CFR 52.79(a) requirements for COL applications to contain information demonstrating how the applicant will comply with 10 CFR 50.62 [ATWS requirements] and 10 CFR 50.68 [criticality accident requirements].

The staff should revise 10 CFR 50.62(d) [ATWS implementation schedule requirements] to make it applicable only to licenses issued before the effective date of the final Part 52 rule.

The proposed 10 CFR 52.63 language could be enhanced to allow the Commission to amend design certification rules to address generically any of the Design Acceptance Criteria. The staff should include a discussion of this potential enhancement in the *Federal Register* notice and request comments on whether and how the rule might be revised to incorporate such a provision. The staff should also solicit comment on the extent to which backfit-like provisions should apply when amending a design certification rule.

NRR and OGC should provide the Commission with proposed resource and organization plans for the next four years, as well as proposed strategies for staff review of expected applications and support for COL hearings before the Atomic Safety and Licensing Board Panel.

The staff should solicit public comment on whether 10 CFR Part 21 reporting requirements of defects and noncompliance should be imposed on ESP or design certification applicants.

Changes to the *Federal Register* Notice

1. Page 4, paragraph 2, revise line 5 to read ‘ ... CFR part 52 ~~allow for resolving resolved~~ safety’
2. Page 5, last paragraph, revise lines 1 and 2 to read ‘~~A Following the close of the public comment period on the July 2003 proposed rule, a number of factors led the NRC to question whether~~ the July 2003 ~~that proposed~~’
3. Page 6, 1st full paragraph, revise line 13 to read ‘ ... are not ~~adequately~~ addressed in this proposed rule (~~or are not adequately addressed~~);’
4. Page 7, revise line 14 from the top to read ‘ ... to the design ~~and not site-specific.~~’
5. Page 18, revise line 7 from the top to read ‘ ... it would ~~be inconsistent~~ make no sense for the’
6. Page 21, paragraph 1, revise lines 6 and 7 to read ‘ ... could be added to ~~the appropriate sections in~~ part 52 ~~for combined licenses and manufacturing licenses~~. Inasmuch as’
Revise line 10 to read ‘ ... with the ~~inclusion of an analogous~~ provision’
7. Page 26, last paragraph, revise line 12 to read ‘ ... an exemption ~~with regard to design certification information from one or more elements~~ must’
Revise lines 13 and 14 to read ‘ ... licensee ~~seeks an exemption from other provisions of Subpart B or other provisions of a particular standard design certification rule~~ compliance with those criteria, then’
8. Page 27, revise line 1 from the top to read ‘ ... § 52.7. ~~However, the~~ The exemption’
9. Page 27, last paragraph, line 6, correct the spelling of “*Siegel*”.
10. Page 31, paragraph 1, revise line 10 to read ‘ ... plant ~~may~~ will be built’
11. Page 32, line 5, correct the spelling of “meteorological”.
Revise line 10 from the top to read ‘ ... Design Criterion ~~a~~ 2’

12. Page 33, 1st full paragraph, revise line 4 to read ‘ ... ~~multi-unit sites~~ **which already have on them one or more licensed units** to include’
13. Page 36, 1st full paragraph, revise line 2 to read ‘ ... work activities ~~, i.e., a limited work authorization (LWA)~~, at the’ Revise line 6 to read ‘ ... perform LWA activities’ Revise line 10 to read ‘ ... perform **limited work LWA** activities’ Revise line 11 to read ‘ ... perform LWA activities’
14. Page 38, last paragraph, revise line 7 to read ‘ ... Administrative Procedures Act’
15. Page 43, 1st full paragraph, revise lines 3 and 4 to read ‘ ... would clarify ~~what~~ “elements” **for which** a variance’
16. Page 47, last paragraph, revise line 1 to read ‘ ... to be ~~more~~ consistent’
17. Page 49, revise the last line to read ‘ ... to all ~~future~~ applications’
18. Page 56, revise the last line to read ‘ ... incorporating DCR [**Design Certification Rule**] general’
19. Page 73, revise line 5 from the top to read ‘ ... proposal **would not** ~~wouldn’t~~ require’
20. Page 79, revise line 3 from the top to read ‘ ... requirement to **obtain** ~~get~~ NRC’
21. Page 100, 2nd full paragraph, revise line 4 to read ‘ ... requalification **program** that’
22. Page 101, 1st full paragraph, revise line 4 to read ‘ ... introductory **text** ~~test~~ to’
23. Page 102, 1st full paragraph, revise line 4 to read ‘ ... requirements for licensees in 10 CFR part 21. As discussed with **respect to** the’
24. Page 104, revise the last line to read ‘ ... in the **applicable** ~~respective~~ design’
25. Page 114, last paragraph, revise line 7 to read ‘ ... hazards **consideration determination finding** for’
26. Page 127, last paragraph, line 4, correct the spelling of “licenses”.
27. Page 133, add a period at the end of the 1st paragraph.
28. Page 135, revise line 1 to read ‘ ... management **excellence**. The’
29. Page 135, 1st full paragraph, revise line 10 to read ‘ ... original applican**tion** ~~ten~~ for that’
30. Page 140, last paragraph, revise line 6 to read ‘ ... ERA **is** ~~are~~ much’
31. Page 143, last paragraph, revise line 2 to read ‘ ... in 2003 **sets** forth’
32. Page 152, revise line 1 to read ‘ ... **under** § 52.103(g) for’ Revise line 8 from the top

- to read ‘ ... one of the **principal** ~~principle~~ differences’
33. Page 157, last paragraph, revise line 5 to read ‘ ... firm “**constructing** ~~construction~~ , owning,’
 34. Page 159, last paragraph, revise line 1 to read ‘ ... proposed **Subpart** ~~Part~~ F of’
 35. Page 164, last paragraph, revise line 10 to read ‘ ... facility has **been completed** ~~would~~ increased the cost’
 36. Page 169, last paragraph, revise line 1 to read ‘ ... explicitly **addresses** whether’
 37. Page 170, revise lines 3 and 4 from the top to read ‘ ... action **occurred** ~~ed~~ when the NRC **issued** ~~ed~~ the combined license, which includes **ed** ~~ed~~ the authority’
 38. Page 171, revise line 3 from the top to read ‘ ... of § 2.20**62**. A’
 39. Page 171, last paragraph, revise the last line to read ‘ ... or otherwise **do not** ~~don’t~~ require’
 40. Page 181, revise line 7 to read ‘ ... Commission, **in accordance with** the’
 41. Page 184, last paragraph, revise line 2 to read ‘ ... that **each** operators of a nuclear power reactors licensed’ Revise line 3 to read ‘ ... an operator’s license’
 42. Page 188, last paragraph, revise line 3 to read ‘ ... license **authorizes** the’ Revise line 6 to read ‘ ... processes **authorizes** the’
 43. Page 191, 2nd full paragraph, revise line 5 to read ‘ ... NRC staff’s views.’ Revise line 9 to read ‘ ... in subpart **A** ~~B~~ of part’
 44. Page 193, last paragraph, revise line 3 to read ‘ ... that **Subpart** ~~Part~~ A of’
 45. Page 220, § 2.1(d), revise to read ‘ ... Administrative Procedures Act’
 46. Page 230 revise line 1 from the top to read ‘ ... manufactured **may** ~~will~~ be’
 47. Page 231, paragraph (4), revise line 1 to read ‘ ... will be **Rockville** ~~Bethesda~~ ,’
 48. Page 234, paragraph (12), revise line 1 to read ‘ ... subpart **A** ~~B~~ of’
 49. Page 243, last paragraph, revise lines 2 and 3 to read ‘ ... writing to the **Chief, New Reactor Licensing Branch** ~~Director, New, Research and Test Reactors Program, U.S. Nuclear~~’
 50. Page 246, § 2.819(b), revise the last line to read ‘ ... on the **denial** ~~withdrawal~~ will’
 51. Page 258, § 21.2(2), revise line 3 to read ‘ ... for ~~the~~ manufacture,’
 52. Page 264, paragraph (ix), revise lines 1 and 2 to read ‘ ... permit was **sold** ~~or~~

transferred.’

53. Page 285, 1st full paragraph, revise line 5 to read ‘ ... possess **R**restricted **D**data or’
54. Page 285, 2nd full paragraph (67.), revise line 3 to read ‘ ... and Regulatory Approvals.’
55. Page 321, last paragraph, revise line 5 to read ‘ ... that **if** ~~if~~ the’
56. Page 340, last paragraph, revise the last line to read ‘ ... 100 continues to’
57. Page 350, paragraph (5), revise line 2 to read ‘ ... assessment, **or an entity participating in the proceeding pursuant to § 2.315(c)**, may take’
58. Page 353, 1st full paragraph, revise line 1 to read ‘ ... license covered by ~~§ 51.20~~’
59. Page 426, paragraph (18), revise lines 1 and 2 to read ‘ ... with **§ 50.69 of this chapter**, the information’
60. Page 445, 2nd full paragraph, revise line 5 to read ‘ ... licensee **may use** ~~using~~ any’
61. Page 456, § 52.155(a), revise line 2 to read ‘ ... under **this** subpart’
62. Page 460, paragraph (13), revise lines 1 and 2 to read ‘ ... with **§ 50.69 of this chapter**, the information’
63. Page 468, revise lines 3 and 4 from the top to read ‘ ... the manufactured reactor, **the costs and benefits of SAMDAs, and the bases for not incorporating SAMDAs into the design of the reactor to be manufactured.** ~~and the environmental impacts of operation of the manufactured reactor.~~’
64. Page 469, last paragraph, revise the last line to read ‘ ... 10 CFR **2.104** ~~2-309~~.’
65. Page 551, paragraph (k), line 1, delete the comma after “under”.
66. The staff should replace references to § 50.34 in § 52.3(b)(4) with references to § 52.79.
67. The staff should delete the requirement in § 52.156 to comply with § 50.33a (antitrust reviews) to be consistent with the Energy Policy Act of 2005.
68. The staff should add a provision to § 52.177 that “An application for renewal must contain all information necessary to bring up to date the information and data contained in the previous application.”
69. The staff should correct a typo in Appendix A, Section III.A. There is a reference to 10 CFR Part 51 in line 4 of this paragraph that should be a reference to 1 CFR Part 51.

Changes to the Regulatory Analysis

70. Page 6, paragraph 1, revise lines 3 and 4 to read ‘ ... Part 52. **In** ~~The~~ NRC issued a

staff requirements memorandum issued on January 14, 1999, the Commission approving the NRC ...' Revise the last line to read '... incorporate stakeholder shareholder comments.'

71. The staff should revise the Regulatory Analysis (RA) assumptions regarding the number of COL applications that will reference an ESP in the next three years to assume that only three COL applicants will reference an ESP in the next three years.

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