

POLICY ISSUE INFORMATION

May 4, 2006

SECY-06-0099

FOR: The Commissioners

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SUBJECT: ENERGY POLICY ACT OF 2005 IMPLEMENTATION STATUS

PURPOSE:

To provide the Commission with a status of the staff's implementation of U.S. Nuclear Regulatory Commission (NRC) responsibilities under the Energy Policy Act of 2005.

BACKGROUND:

On August 8, 2005, President Bush signed into law H.R. 6, the Energy Policy Act of 2005. On October 31, 2005, in SECY-05-0201, the staff provided the Commission with its plan to implement the Act and requested approval of the staff's recommendations for funding specific activities. On January 5, 2006, the Commission issued its Staff Requirements Memorandum for implementation of the Act. The staff incorporated the Commission direction into the plan and has been addressing each of the applicable sections of the Act.

DISCUSSION:

The attached updated version of the implementation plan contains only those sections of the Act in which NRC was specifically authorized or required to take action. All necessary resources have been budgeted for FY 2006 and FY 2007 to accomplish the actions, except as noted for Sections 644, 645, 652, 653, and 656 of the Act. For Sections 644 and 645, related to the next generation nuclear plant (NGNP) project, NRC resources will be funded by an interagency transfer from the Department of Energy (DOE). The details of the agreement

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between NRC and DOE will be documented in a Memorandum of Understanding (MOU). The MOU is currently being developed to outline how the two agencies will cooperatively interact, and to facilitate the transfer of funds from DOE to NRC. The DOE will determine the amount of the transfer based on the availability of its NGNP project resources. For Sections 652, 653, and 656, the Office of Administration (ADM) can absorb an additional 2,000 requests (i.e., fingerprint or weapons checks) per month, or a combined total of 24,000 additional requests per year, to implement the provisions of Sections 652, 653, and 656 of the Act. Projections from the pertinent program offices regarding the number and timing of these requests have not been finalized. If the volume or timing of all requests combined causes additional requests to exceed 2,000 per month, or the number of requests submitted in paper form exceeds 50 percent of the total additional requests received per month, ADM will seek additional resources, as necessary. Note that this work is cost-reimbursable.

Many actions and key milestones relevant to provisions contained in the Act have been completed and many more are on schedule to be completed over the next several years. Some examples of significant milestones the staff has completed are as follows:

- Final rule to implement revised Price Anderson Act and eliminate NRC antitrust reviews;
- Final rule on import/export controls;
- Proposed rule on Design Basis Threat;
- Confirmatory Order for emergency notification system backup power at Indian Point;
- Final rule on National Source Tracking System submitted to the Commission;
- Grant awarded to National Academy of Sciences for a study of industrial, research, and commercial uses of radiation sources;
- Proposed rule broadening the definition of byproduct material submitted to the Commission; and
- Proposed rule for protection of safeguards information submitted to the Commission.

However, at least one action will not be completed in accordance with the Act and one other may potentially not be completed in accordance with the Act.

The one action that will not be completed on time is related to Section 656 of the Act, "Secure Transfer of Materials." This section of the Act requires the Commission to establish a system such that all byproduct material, source material, special nuclear material, high-level radioactive waste, spent nuclear fuel, transuranic waste, and low-level radioactive waste, when transferred or received in the United States by a party pursuant to an import or export license issued by the NRC are accompanied by a manifest describing the type and amount of materials being transferred or received. More significantly, this section requires that each individual receiving or accompanying the transfer of such material be subject to a security background check conducted by an appropriate Federal entity. The staff has focused most of its efforts on this second requirement since it believes that it can rely on DOT's manifest requirements to address the first requirement. This section also directs the Commission to issue regulations within one year of the Act (i.e., August 8, 2006) identifying radioactive materials or classes of individuals to be given exceptions to these requirements. The staff has been coordinating its rulemaking activities with stakeholders and has been working to resolve several significant issues associated with implementation of the rule. As a result, the staff anticipates that it is feasible to issue a final rule on this section by the end of November 2006.

Additionally, on April 26, 2006, the staff briefed the Commission's Technical Assistants on an alternate approach to addressing Section 656. If the Commission agrees with this approach, the staff would revise its proposed plan of action. However, the staff has not yet received approval from the Commission to pursue the alternate approach, and is continuing with the approach discussed in the attachment.

The issues that staff are attempting to resolve prior to issuing the proposed rule are as follows:

- Coordination with other Federal agencies responsible for transportation security and background checks;
- Coordination with States over regulatory basis and rule language;
- Defining extent of individuals subject to background checks; and
- Defining acceptance criteria for background checks.

The other action that may potentially not be completed in accordance with the Act is Section 651(d)(1), "Radiation Source Protection, National Academy of Sciences Study." This action requires the Commission to enter into an arrangement with NAS within 60 days to conduct a study of industrial, research, and commercial uses for radiation sources. The study must identify if there are other processes which either can replace radiation sources with economically and technically appropriate alternatives, or can use radiation sources that pose a lower risk to the public. The NRC is required to submit the results of the study to Congress by August 7, 2007. On January 11, 2006, the staff awarded a grant to NAS and on February 15, 2006, held a kick-off meeting with NAS for conduct of the study. However, NAS has not yet begun work on this study. Further, the NAS Committee member selection process takes several weeks, which would indicate that NAS may not have the first Committee meeting until June 2006. The staff has requested a draft report from NAS by Spring 2007 in order to meet the August 2007 due date, but it does not appear likely that NAS will have a draft report available at that time.

CONCLUSION:

Many actions have been completed and many more are on schedule to be completed over the next several years. However, at least one action will not be completed in accordance with the Act and one other may potentially not be completed in accordance with the Act. All necessary resources have been budgeted for FY 2006 and FY 2007 to accomplish the actions, except as noted for Sections 644 and 645 of the Act.

RESOURCES:

Resource considerations associated with this issue have been discussed above.

The Commissioners

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COORDINATION:

This paper has been coordinated with the Office of the General Counsel, which has no legal objection.

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Enclosure:
Energy Policy Act Implementation Status

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* - previous concurrence or via e-mail

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