POLICY ISSUE
(Notation Vote)

November 30, 2007 SECY-07-0208

FOR: The Commissioners

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

SUBJECT: PROPOSAL FOR UPDATING OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS-COGNIZANT REGULATORY GUIDES

PURPOSE:

This paper requests Commission approval of the staff's recommended option for funding the review and update, or withdrawal of Regulatory Guides (RGs) that support programs administered by the Office of Nuclear Material Safety and Safeguards (NMSS).

BACKGROUND:

In Staff Requirements Memorandum COMDEK-07-0005, "FY 2009 Budget Proposal," dated August 31, 2007, the Commission noted that, "While the Agency has established a Regulatory Guide Program, it appears that NMSS has no money currently budgeted to support the review and updating of the documents identified in this program. The staff should provide the Commission with a proposal to conduct this work." In response, the staff estimates that resources totaling about 8.9 full-time equivalents (FTEs) will be needed for review and update or withdrawal of 89 NMSS RGs that support NMSS programs.

The Commission has identified a need to focus on the revision or development of 480 RGs during its review of the Agency's infrastructure to support new reactor licensing activities. In response to Commission direction, the Office of Nuclear Regulatory Research (RES) established a Regulatory Guide Update Program (RGUP) for updating or withdrawing RGs.

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The RGUP categorizes RGs into five groups. The first group (Phase 1) includes the high-priority RGs that were updated by March 2007, to support new reactor licensing activities. The second group (Phase 2) includes RGs that are to be updated by December 2008. The third group (Phase 3) includes RGs that are to be updated by December 2009. Phase 2 and 3 RGs include various topics across the agency (e.g., reactors, materials, decommissioning, and fuel cycle); a RG was categorized as Phase 2 or 3 based on the amount of staff resources needed to update the RG. These two groups include RGs that will be considered for withdrawal, and other RGs for which no updates are planned by December 2009.

In March 2007, RES informed NMSS about the RGUP and requested input on the 89 NMSS RGs that were candidates for review and update, or withdrawal. RES noted that NMSS staff involvement is necessary to provide technical subject expertise and program knowledge for updating or withdrawing NMSS RGs. NMSS informed RES that: (1) NMSS RGs are not needed for licensing new reactors; and (2) there are no resources budgeted, in either fiscal year (FY) 2008 or FY 2009 for NMSS support of RG work.

DISCUSSION:

The majority of NMSS RGs were issued in the 1970s. Most of the RGs (63) pertain to fuel cycle facilities. The remaining RGs pertain to transportation and spent fuel storage (24 RGs) and high-level waste storage (2 RGs). Nearly all of the NMSS RGs are included in RGUP Phase 3.

The Agency's RGUP is based on the following 63-week process for updating or withdrawing each of the 480 RGs, including the 89 NMSS RGs.

1. Review each RG and comporting documents for: (1) RG need; (2) applicability; (3) inter-document references and conflicts; (4) completeness; (5) accuracy; and (6) currency.

2. Develop RG updated text and supporting rationale for the proposed RG action (i.e., RG revision or notice of plans to withdraw).

3. Interoffice [including Office of the General Counsel (OGC)] reviews and approvals of the proposed RG action.

4. Inform and provide an opportunity for a review or briefing on the proposed RG action to the Advisory Committee on Reactor Safeguards (ACRS) and/or the Advisory Committee on Nuclear Waste and Materials (ACNW&M).

5. Publish the proposed RG action for public comment.

6. Resolve public comments and prepare the RG text and supporting rationale for the final RG action (e.g., modification or withdrawal).

7. Conduct interoffice (including OGC) reviews and approvals of the final RG action.

8. Inform and provide an opportunity for a review or briefing on the final RG action to ACRS and/or ACNW&M.

9. Publish the final RG action.

The Commission previously approved contract funding for RES to support the RGUP.

RES estimates that 0.3 FTE will be required to complete 1 through 9 above, for each of the 89 NMSS RGs. The NMSS portion of the RES estimate is an average of 0.1 FTE (135 hours) per RG. Therefore, NMSS unbudgeted resources totaling 8.9 FTEs will be required for review and update or withdrawal, of the 89 RGs.

In response to the Commission's request for a staff proposal to perform the unbudgeted NMSS RG work, RES offered contractor support for RG work to minimize the burden on NMSS resources. The RES contractor would perform about two thirds of the RG update work. NMSS staff would provide to the RES contractor, revised RG text with supporting rationale for the revision. The contractor would prepare and process the RG update documentation required for the RGUP process described below. If no resources are available, all NMSS RG work will be deferred and considered during preparation of the FY 2010 budget. A RG candidate for withdrawal will be the first to be deferred. A RG needed for licensing or certification will be the last to be deferred. Absent updated or withdrawn RGs, NMSS will continue using the Agency-approved best information available for licensing and certification. For example, in developing the current versions of Standard Review Plans for the fuel cycle, transportation, spent fuel storage, and high-level waste repository safety programs, the staff incorporated the most relevant and significant guidance useful to both the staff and applicants/licensees. Consequently, current Standard Review Plans and accompanying Interim Staff Guidance documents for 10 CFR Parts 63, 70, 71, and 72 would continue to be used for licensing actions.

RESOURCES:

The Commission noted in COMDEK-07-0005 that NMSS has no funds budgeted in FY 2008 nor FY 2009 to support updating or withdrawing RGs. In response to the Commission's request, if the staff were to perform the RG updates, it estimates resources totaling 8.9 FTEs for support of the update or withdrawal of 89 NMSS RGs beginning in FY 2008 and continuing for 63 weeks (e.g., if work began in the third quarter of FY 2008, it would continue through the fourth quarter of FY 2009). However, in FY 2008, the Agency currently faces a significant shortfall in funding all items directed by the Commission. This shortfall could be exacerbated in the event of a prolonged continuing resolution. The Chief Financial Officer is currently examining ways to address these shortfalls in the review of unliquidated funding.

RECOMMENDATION:

Given the existing shortfall situation, there are two options to address the NMSS RG work requirement. The first option is to internally reallocate resources within NMSS or other offices from lower priority activities. This is not recommended because RGs are among the lowest priority activities using the NRC's common prioritization structure. Consequently, this would displace higher priority licensing, incident response, and oversight activities. The second option

is to defer this NMSS RG work until after FY 2008 and address its funding during the FY 2009 - FY 2010 budget cycle. This option is preferred because updated RGs are not needed for NMSS licensing/certification and reallocation of resources from higher priority work would not be necessary.

COORDINATION:

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

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NAME	WSchwink	EKraus	MWong	WBrach	PHabighorst	TCroote
DATE	11/14/07	11/16/07	11/14/07	11/14/07	11/16/07	11/14/07
OFFICE	OGC*	RES*	FCSS*	NMSS*	EDO	
NAME	APessin	MJohnson	RPierson	MWeber	LReyes	
DATE	11/14/07	11/21/07	11/16/07	11/21/07	11/30/07	

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