March 2, 2011

MEMORANDUM TO: Richard P. Correia, Director
Division of Security Policy
Office of Nuclear Security and Incident Response

FROM: Bonnie Schnetzler, Team Leader ***/RA/***
Reactor Security Rulemaking & Licensing Branch
Division of Security Policy
Office of Nuclear Security and Incident Response

SUBJECT: REVIEW CRITERIA FOR TITLE 10 OF THE CODE OF THE *FEDERAL REGULATIONS* PART 73.5 COMPLIANCE DATE EXEMPTION REQUESTS FOR ADDITIONAL EXEMPTIONS REQUESTED BY LICENSEES

In 2009, in anticipation of receiving several Title 10 of the *Code of Federal Regulations* Part 73 (10 CFR 73) compliance date exemption requests, the Reactor Security Rulemaking and Licensing Branch (RSRLB) staff published a memo (ML0934401921) establishing a minimum baseline of information that the staff would consider to be adequate to support issuance of an exemption from the compliance date established for the new power reactor security regulations of 10 CFR 73.55. The criteria are representative of the type of information the RSRLB staff would look for in such a request to reach a conclusion that issuance of the exemption is justified. The RSRLB staff also noted that these criteria are generic, and may not completely represent the information that would be necessary to reach a conclusion in all instances. Licensees were obligated, on a site-specific basis, to provide the appropriate type and quality of information to justify their site-specific request. The criteria used by the RSRLB staff for these evaluations are as follows.

<u>10 CFR Part 73 Exemption Criteria</u>

1) Identification of the specific requirement or requirements of the rule that the licensee needs additional time to implement.

2) Detailed justification that describes the reason the licensee requires additional time to implement the specific requirement or requirements identified.

3) Detailed technical information that supports the licensee's solution for the requirement.

CONTACT: Bonnie Schnetzler, NSIR/DSP/RSRLB
(301) 415-7883

4) A proposed implementation schedule with activity milestones that support the licensee's solution and are consistent with the scope of work to be conducted and the new compliance date requested.

5) An evaluation of the impact that the additional time to implement the requirements will have on the effectiveness of the licensee's overall physical protection program and protective strategy.

The RSRLB staff used these five criteria as well as the general requirement for issuance of exemptions in 10 CFR Part 73.5 and the general performance objective of 10 CFR 73.55(b) to evaluate exemption requests submitted to the U.S. Nuclear Regulatory Commission (NRC) during the period from November 2009, until March 2010. Subsequently, the RSRLB staff processed and recommended approval of 40 exemptions to the compliance date based on these five criteria.

Since that time, some licensees have indicated intent to and/or requested an additional exemption to extend the compliance date granted by the NRC of specific portions of the Power Reactor Security Requirements regulation, i.e. 73.55 requirements.

The RSRLB staff reviewed the original five criteria for sufficiency in evaluating these additional requests for compliance date exemption and determined that these five criteria continue to be adequate to support issuance of an exemption from the Part 73 compliance date with two clarifications regarding criterion number 2. Criterion number 2 states, "Detailed justification that describes the reason the licensee requires additional time to implement the specific requirement or requirements identified."

First, the RSRLB staff has concluded that licensees seeking an additional compliance date exemption should describe in the submittal their consideration of implementing interim security measures at their site in lieu of seeking an additional exemption. Specifically, has the licensee analyzed the capability to implement interim security measures that would bring the licensee into compliance with the regulation? While the interim security measures may not provide a permanent resolution for regulatory compliance, they may be adequate until the project or installation of other security equipment is completed. In instances where interim security measures can provide regulatory compliance, an additional exemption may not be warranted. Where interim security measures significantly delay the final installation and/or regulatory compliance cannot be achieved, an additional exemption may be necessary.

Second, the licensee should provide timelines and/or sufficient information and justification to describe why the licensees' first exemption compliance date and schedule were not achievable. In the initial exemption requests, licensees provided a schedule of actions necessary to achieve regulatory compliance. New compliance dates were granted by the NRC based on the schedules and data provided by the licensee. The RSRLB staff has determined that for additional schedule exemption requests, the basis for not achieving the exemption compliance date will be reviewed to ensure a good faith effort is being made on the part of the licensee to come into regulatory compliance. It is incumbent on the licensee to provide this information and justification. The RSRLB staff would consider sufficient justification could include: (a) events/discoveries that are beyond the capability of the licensee to control, anticipate, or mitigate such as flooding or other acts of nature, and (b) the discovery of configuration and/or integration conflicts involving equipment upgrades that if not corrected or modified during

construction/installation could result in non-compliance and/or reduced program/system effectiveness. In instances where the licensee does not provide a sufficient justification that is supported by the identification of uncontrollable or significant changes to the original schedule leading to a failure to meet the licensees' self-identified full compliance date, staff may not recommend approval of the exemption request.

To incorporate these two sub-criteria, the second criterion will be supplemented as follows:

2. Detailed justification that describes the reason the licensee requires additional time to implement the specific requirement or requirements identified.

a. Licensee has considered implementation of interim security measures to meet the regulatory requirement.
b. Justification describes why the licensees' prior exemption date and schedule are not achievable and why/how the license provided a good faith effort to meet the original date.

For licensees requesting another exemption for Part 73 schedule requirements, the staff will evaluate the information provided by the licensee against the original generic review criteria and the additional two clarifications for the criterion regarding justification of the reason the licensee requires additional time to implement the regulatory requirements as well as the general performance objective of 10CFR Part 73.55(b) to ensure that all applicable regulatory requirement are met before the staff recommends that issuance of the exemption is appropriate.

construction/installation could result in non-compliance and/or reduced program/system effectiveness. In instances where the licensee does not provide a sufficient justification that is supported by the identification of uncontrollable or significant changes to the original schedule leading to a failure to meet the licensees' self-identified full compliance date, staff may not recommend approval of the exemption request.

To incorporate these two sub-criteria, the second criterion will be supplemented as follows:

2. Detailed justification that describes the reason the licensee requires additional time to implement the specific requirement or requirements identified.

a. Licensee has considered implementation of interim security measures to meet the regulatory requirement.
b. Justification describes why the licensees' prior exemption date and schedule are not achievable and why/how the license provided a good faith effort to meet the original date.

For licensees requesting another exemption for Part 73 schedule requirements, the staff will evaluate the information provided by the licensee against the original generic review criteria and the additional two clarifications for the criterion regarding justification of the reason the licensee requires additional time to implement the regulatory requirements as well as the general performance objective of 10CFR Part 73.55(b) to ensure that all applicable regulatory requirement are met before the staff recommends that issuance of the exemption is appropriate.

ADAMS ACCESSION NO. ML102710163, Form 665, ML102710177

OFFICE	NSIR/DSP	NSIR/DSP	NSIR/DSP	OGC	NRR	NSIR/DSP
NAME	B.Schnetzler	R.Felts	M.Layton	E.BowdenBerry	R.Pascarelli	R. Correia
DATE	10/1/10	10/4/10	10/6/10	10/20/10	02/1/11	03/ 2/11