

September 29, 2005

MEMORANDUM TO: Chairman Diaz  
Commissioner Merrifield  
Commissioner Jackzo  
Commissioner Lyons

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

SUBJECT: INCORPORATION OF ENERGY POLICY ACT PROVISIONS INTO  
10 CFR 73.55 PROPOSED RULE PACKAGE AND REQUEST FOR A  
THREE MONTH EXTENSION

The purpose of this memorandum is to inform you of the staff's plans to amend 10 CFR 73.55 to incorporate provisions of the Energy Policy Act. Specifically, Section 652 expanding the scope of personnel and licensee types subject to fingerprinting, and Section 653 enabling the NRC to authorize (not require) the use of automatic weapons, corresponding ammunition, and large capacity ammunition feeding devices. 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."

On June 28, 2005, the Commission directed the staff in its 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) and the July 29, 2005 Memorandum to the Commission, "Revised Schedule for Completing the Power Reactor Security Requirements Rulemaking." The staff has continued to work to provide the proposed rule in February 2006, per the original schedule with the safety/security interface expanded scope. However, because of the addition of the provisions of the Energy Policy Act, I am requesting a three-month extension to May 2006, to submit the proposed rule package. The delay in the delivery of the proposed rule is due to the time needed to develop the technical bases and the regulatory analyses for these provisions. It is anticipated that enough detail for these provisions must be identified to be included in the proposed rule to allow for adequate public comment. The coordination with the Department of Justice (DOJ) to obtain their required approval of the guidelines for automatic weapons use is a complicating factor and contributed to the delay. Although approval of the guidelines is not required at the proposed rule stage, the scope of the guidelines needs to be clarified. Staff has already approached DOJ on this subject. The schedules for performing this additional work is provided in the attached tables.

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Staff could opt not to incorporate the provisions of the Energy Policy Act into this rulemaking and provide the proposed rule package in February 2006. However, the NRC had requested that these provisions be incorporated into the Act, and believes that a three-month extension to the overall rulemaking would be more responsive to Congress than completing the current rulemaking and then work to develop a second rulemaking to add the provisions to the rule, which would not begin for approximately 18 months to allow completion of the current proposed rule. Furthermore, because the approval of the DOJ is in part out of the staff's control, the staff will provide a means to remove the weapon's portion of the proposed rule from consideration, if there are unforeseen issues with DOJ.

SECY please track

Attachment: As stated

cc w/attachment: SECY  
OGC  
DOC  
OCA  
OPA  
CFO

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\* See previous concurrence

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**Justification for 3 Month Extension to 10 CFR 73.55 Proposed Rule To Commission**

September 23, 2005

## Energy Policy Act Section 652 (Fingerprinting, Criminal history Background Check)

Section 652		OCT05	NOV05	DEC05	JAN06	FEB06	MAR06	APR06	MAY 06	MAY 07
Dev Tech Basis			Completed							
Dev Prop Rule Packag						Draft package completed (for EPA 652)	Consolidate into overall rulemaking package	Section Chief thru NSIR Director concurrence Inter-Office concurrence	EDO concurrence Proposed Rule to Commission	Final Rule
	Comm Paper					Draft completed				
	Fed Reg Notice					Draft completed				
	Draft Reg analysis/ backfit					Draft completed				
	OMB Clear					Draft completed				

## Energy Policy Act Section 653 (Automatic weapons)

Section 653		OCT05	NOV05	DEC05	JAN06	FEB06	MAR06	APR06	MAY 06	MAY 07
Dev Tech Basis			Completed							
Dev Prop Rule Packag						Draft package completed (for EPA 653)	Consolidate into overall rulemaking package	Section Chief thru NSIR Director concurrence Inter-Office concurrence	EDO concurrence  Proposed Rule to Commission	Final Rule
	Comm Paper					Draft completed				
	Fed Reg Notice					Draft completed				
	Draft Reg analysis/ backfit					Draft completed				
	OMB Clear					Draft completed				
Work with DOJ										
	Develop Guidelines	Oct 11-First mtg NSIR/OGC w/ ATFE  Oct (TBD)-First mtg with DOJ/ATFE	FLETC training protocols vetted  NRC staff submits proposed guidelines	DOJ comments received and incorporated into proposed guidelines	Submit guidelines to Commission for approval  Inform proposed rule language with draft guide	.	"Final" guidelines submitted to DOJ after Commission approval.  (not required for the rulemaking, can work in parallel)	Receive DOJ approval on guidelines  (not required for the rulemaking, can work in parallel)		