October 27, 2005

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations

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

SUBJECT: STAFF REQUIREMENTS - SECY-05-0106 - PROPOSED RULEMAKING TO REVISE 10 CFR 73.1, DESIGN BASIS THREAT (DBT) REQUIREMENTS

The Commission has approved the publication of the proposed rulemaking to revise the design basis threat requirements and the letter to the petitioner, subject to the following comments.

Changes to the *Federal Register* notice

1. On page 1, paragraph 1, delete the sentences in lines 2 through 9 (The proposed amendment would ... DBT orders.) and insert the following: The proposed rule would amend 10 CFR 73.1(a) to, among other things, make generically applicable the security requirements previously imposed by the Commission's April 29, 2003 DBT orders, which applied to existing licensees, and redefine the level of security requirements necessary to ensure that the public health and safety and common defense and security are adequately protected. Revise line 13 to read ' ... that provide guidance to licensees ....' After the period in line 15, insert the following: The specific details related to the threat, which contain both safeguards information (SGI) and classified information, are contained in adversary characteristics documents (ACDs) that are not publicly available. These documents include specific details of the attributes of the threat consistent with the requirements imposed in the April 29, 2003, DBT orders.

2. On page 5, paragraph 1, revise line 2 to read ' ... with high assurance. These requirements ....' Delete the sentences in lines 5 through 9 (Radiological sabotage specifically ... of SSNM.)

3. On page 5, paragraph 2, revise line 7 to read ' ... DBT requirements that ~~which~~ contained ....' Delete the last sentence (The balance between ... orders.) and insert the following: The Commission deliberated on the responsibilities of the local, State, and Federal governments to protect the nation, and the responsibility of the licensees to protect individual nuclear facilities, before reaching consensus on a reasonable approach to security in the April 29, 2003 DBT orders. After gaining experience under these orders over the past two years, the Commission believes that the attributes of the orders should be generically imposed on certain classes of licensees.

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4. On page 6, revise lines 1 and 2 from the top to read ' ... new threat environment ~~and are described in the April 29, 2003, DBT orders~~.' Revise lines 6 through 8 to read ' ... information that is distributed only to persons with authorized access and ~~therefore, are withheld from public disclosure and only distributed~~ on a need-to-know basis ~~to persons with authorized access~~. The NRC's DBT takes into consideration ~~is not based on worst case scenarios but rather on~~ actual demonstrated adversary characteristics as well as pertinent intelligence information applicable to domestic threats ~~demonstrated worldwide~~ ....'

5. On page 6, 1st full paragraph, line 1, delete the comma after "2003". Revise line 4 to read ' ... orders required ~~resulted in~~ licensees to make security ....' Revise line 9 to read ' ... thorough ~~worker~~ initial and follow-on screening of temporary and permanent workers. The NRC has reviewed and approved the revised security plans that were developed and submitted by power reactor and Category I fuel cycle facility licensees in response to the April 29, 2003 orders.' Delete the last sentence (Currently, all power ... orders.)

6. On page 7, replace paragraph 2 with the following: The principal objectives of the proposed rule are, are among other things, to make generically applicable the security requirements previously imposed by the Commission's April 29, 2003 DBT orders, and to define in NRC regulations the level of security necessary to ensure adequate protection of the public health and safety and defense and security.

7. On page 7, after the 2nd paragraph, insert the following new paragraphs:

The Commission continues to consider many factors in developing the proposed DBT and other security requirements. As directed by Congress under section 651(a) of the recently enacted Energy Policy Act of 2005, the NRC is giving consideration to the following 12 factors as part of this rulemaking to revise the design basis threats:

1. The events of September 11, 2001;

2. An assessment of physical, cyber, biochemical, and other terrorist threats;

3. The potential for attack on facilities by multiple coordinated teams of a large number of individuals;

4. The potential for assistance in an attack from several persons employed at the facility;

5. The potential for suicide attacks;

6. The potential for water-based and air-based threats;

7. The potential use of explosive devices of considerable size and other modern weaponry;

8. The potential for attacks by persons with a sophisticated knowledge of facility operations;

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9. The potential for fires, especially fires of long duration;

10. The potential for attacks on spent fuel shipments by multiple coordinated teams of a large number of individuals;

Add a footnote as follows: “Transportation of spent nuclear fuel is subject to separate regulatory requirements and public comments will be considered.”

11. The adequacy of planning to protect the public health and safety at and around nuclear facilities, as appropriate, in the event of a terrorist attack against a nuclear facility; and

12. The potential for theft and diversion of nuclear material from such facilities.

A number of these factors are already reflected in the text of the proposed rule. For example, the proposed rule would require protection against suicidal attackers, insiders, and waterborne threats. Some of these factors are not included in the proposed rule. For example, there is no provision in the proposed DBT rule for an attribute of air-based threats. The Commission invites and looks forward to public comment on the proposed rule provisions, as well as whether or how the 12 factors should be addressed in the DBT rule. The Commission will further consider and resolve any comments received in the final rule.

8. On page 7, last paragraph, revise line 1 to read ‘~~To achieve alignment with requirements imposed by order, t~~ The proposed rule would also ....’

9. On page 8, delete the sentence in lines 1 through 3 from the top (An exemption from the ... orders.) Revise lines 3 through 6 to read ‘ ... evaluated the need to apply ~~for including~~ waterborne requirements to ISFSIs ~~in the October 16, 2002, ISFSI orders~~ and concluded that other means in the proposed rule ~~orders~~ were sufficiently protective to preclude the need for ~~that~~ specific requirements regarding waterborne threats ~~were not required~~. Consequently, an exemption from the waterborne threat has been added for ISFSIs in this proposed rule.’

10. On page 8, 1st full paragraph, revise line 4 to read ‘ ... Commission has determined ~~DBT orders now~~ , however, that due to the current threat environment ~~require~~ certain ....’ Revise line 5 to read ‘ ... cycle facilities) need to protect ....’ Revise lines 8 and 9 to read ‘ ... Part 50) ~~because the Commission has not issued any orders that would require the exemption to be eliminated~~. Delete the footnote at the end of the paragraph.

11. On page 8, last paragraph, revise line 3 to read ‘ ... consistent with the insights gained from the application of supplemental security requirements ....’

12. On page 9, 1st full paragraph, revise lines 3 and 4 to read ‘ ... adversaries, the greater the chance that potential adversaries could exploit that information ~~more information that would be available and that could be exploited by adversaries~~.’ Delete the sentence in lines 4 through 7 (If potential adversaries ... systems.) Revise line 7 to read ‘The disclosure of ~~Disclosing~~ such details as the specific weapons, force size, ...’

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13. On page 9, 2nd full paragraph, revise line 1 to read ' ... the public to be informed of ~~understand~~ the types ....'

14. On page 9, last paragraph, line 3, insert a comma after "ACDs". Revise line 6 to read ' ... documents must ~~will~~ be withheld ....' Revise line 7 to read ' ... made available only on a ....'

15. On page 10, paragraph 2, line 5, insert a comma after "PRM-73-12". Revise line 7 to read ' ... part through this rulemaking ~~and denied in part~~, is more ....'

16. On page 10, paragraph 3, revise line 1 to read ' ... to § 73.1 will continue to ensure ....' Revise line 3 to read ' ... materials. The revised DBTs represent ....' Revise line 5 to read ' ... amendments to § 73.1 reflects ~~would not expand the DBTs beyond~~ requirements ....'

17. On page 10, last paragraph, delete the sentence in the last 3 lines (The changes are based ... *Order* ...).

18. On page 11, delete lines 1 through 3 at the top (... *Modifying* ... 2003.)

19. On page 17, last paragraph, delete the sentence in the last 3 lines (The DBT requirements ... not be ...).

20. On page 18, delete lines 1 and 2 from the top (... required to revise ... imposed.)

21. On page 18, last paragraph, revise line 4 to read ' ... period expired; however, the ....'

22. On page 19, 2nd full paragraph, revise lines 4 and 5 to read ' ... comparison could ~~reveal the limits of the proposed DBT rule, thereby compromising~~ compromise security.'

23. On page 20, 1st full paragraph, revise line 1 to read ' ... intends to defer action on ~~deny~~ the other requests in PRM-73-12, specifically those ~~the~~ aspects ....' Revise line 2 to read ' ... against aircraft, and to address those issues as part of the final action on this proposed rule.' Delete the sentences in lines 2 through 5 (PRM-73-12 requests that ... as"beamhenge.")

24. On page 20, 2nd full paragraph, revise line 1 to read 'Federal and other governmental efforts to ....' Revise lines 6 through 8 to read ' ... out. Such improvements have already been exercised by t~~T~~he Department of Defense and the Federal Aviation Administration through responses to airspace violations near nuclear power plants that were subsequently determined not to be threats ~~have acted to protect airspace above a nuclear power plant in response to a threat at the time thought to be credible, but which was later determined to be non-credible~~. Revise line 8 to read ' ... other governmen~~t~~al ....'

25. On page 20, 3rd full paragraph, revise line 5 to read ' ... radioactive releases. Furthermore ~~As a result of these preliminary assessments~~, the NRC required existing

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nuclear power plant licensees to develop and implement ~~enhancements~~ strategies to mitigate potential consequences in the unlikely event of a successful attack on a nuclear power plant. For new nuclear power plants, the opportunity exists to develop designs that provide for enhanced protection against potential threats. As part of a comprehensive ....'

26. On page 21, revise line 1 from the top to read ' ... unlikely event of an ~~successful~~ attack, including an aircraft crash, ~~on~~ into a nuclear ....' Delete the sentences in lines 1 through 11 (As part of a comprehensive ... remains valid.) Revise line 11 to read ' ... ~~Furthermore, t~~ The staff ....' Delete the sentence in lines 13 and 14 (Therefore, based on ... PRM-73-12.)

27. On page 21, last paragraph, revise line 8 to read ' ... have effective defensive capabilities and security measures ....'

28. On page 22, revise lines 1 and 2 from the top to read ' ... of actual demonstrated adversary characteristics ~~demonstrated~~ in a range of terrorist attacks, ~~worldwide~~ and a determination as to the ~~which~~ attacks against which a private ....' Revise line 3 from the top to read ' ... expected to defend ~~against~~.'

29. On page 22, 1st full paragraph, revise line 3 to read ' ... rule text, and is deferring action on other request in PRM-73-12, specifically those aspects of PRM-73-12 which deal with air-based attacks.' Delete the sentence in lines 3 and 4 (The NRC intends ... petition.)

30. On page 22, 2nd full paragraph, revise line 3 to read ' ... assist current licensees in ensuring that their security plans meet the requirements in the proposed rule, as well as future license ...' Revise lines 3 and 4 to read ' ... plans. The new guidance incorporates the insights gained from applying the earlier ~~consolidates other~~ guidance that ...' Revise line 6 to read ' ... guidance is expected to be consistent with revised security measures at ~~would not cause~~ current licensees' ~~to revise security measures at their~~ ....'

31. On page 22, 3rd full paragraph, revise line 4 to read ' ... information and, therefore, is ....' Revise line 5 to read ' ... to those ~~with~~ who ....'

32. On page 23, revise lines 1 and 2 from the top to read ' ... information and, therefore, is withheld from public disclosure and distributed only on a ....'

33. On page 28, replace the paragraph under "Backfit analysis" with the following: The NRC has determined, pursuant to the exception in 10 CFR 50.109(a)(4)(iii), that a backfit analysis is unnecessary for this proposed rule. Section 50.109 states in pertinent part that a backfit analysis is not required if the Commission finds and declares with appropriate documented evaluation for its finding that a "regulatory action involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate." The proposed rule would increase the security requirements currently prescribed in NRC regulations, and is necessary to protect nuclear facilities against potential terrorists. When the Commission imposed security enhancements by order in April 2003, it did so in response to an

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escalated domestic threat level. Since that time, the Commission has continued to monitor intelligence reports regarding plausible threats from terrorists currently facing the U.S. The Commission has also gained experience from implementing the order requirements and reviewing revised licensee security plans. The Commission has considered all of this information and finds that the security requirements previously imposed by DBT orders, which applied only to existing licensees, should be made generically applicable. The Commission further finds that the proposed rule would redefine the security requirements stated in existing NRC regulations, and is necessary to ensure that the public health and safety and common defense and security are adequately protected in the current, post-September 11, 2001, environment.

Changes to the Regulatory Analysis

34. On page i, paragraph 2, revise lines 1 and 2 to read ' ... two alternatives to the proposed rule changes to ~~for consolidating the supplemental requirements put in place by the orders with~~ the DBT ....'

35. On page i, last paragraph, revise line 7 to read ' ... of sensitive and classified information, as ....'

36. On page 1, paragraph 3, revise line 10 to read ' ... DBT takes into consideration ~~is not based on~~ ~~worst case scenarios but rather on~~ actual demonstrated adversary characteristics as well as pertinent intelligence information applicable to domestic threats ~~demonstrated worldwide~~ ....'

37. On page 2, paragraph (b), delete the 1st sentence (The proposed ... 73.1(a).) and replace it with the following: The proposed ruelmaking would, among other things, make generically applicable the security requirements previously imposed on existing licensees by the Commission's April 2003 DBT orders, and redefine in NRC regulations the level of security necessary to ensure adequate protection of the public health and safety and defense and security. Revise line 6 to read ' ... to those with a need to know and ....'

38. On page 2, paragraph (c), delete this paragraph and replace it with the revise discussion from the FRN.

39. On page 3, last paragraph, revise line 13 to read ' ... public who have a need to know and authorized ....'

40. On page 4, paragraph III.(a), delete the 3 paragraphs in this section and revise to be consistent with the FRN.

Changes to the Environmental Assessment and Finding of No Significant Impact

41. On page i, delete the last paragraph (The principal ... 73.1(a).) and replace it with the following: The proposed rule would amend 10 CFR 73.1(a) to, among other things,

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make generically applicable the security requirements previously imposed by the Commission's April 29, 2003 DBT orders, which applied to existing licensees, and redefine the level of security requirements necessary to ensure that the public health and safety and common defense and security are adequately protected.

42. On page iii, line 6 from the top, replace "denied" with "deferred".

43. On page vii, paragraph 3, revise line 4 to read ' ... and would have no other ....'

Changes to Table 1 (Attachment 4 to SECY-05-0106)

44. No. 1 - revise NRC response as follows: "The NRC review of PRM-73-12 is contained in Section V of the proposed notice of rulemaking for § 73.1. The NRC is granting PRM-73-12 in part by conducting this proposed rulemaking to revise the DBT requirements in § 73.1(a) to reflect certain specified requested changes contained in PRM-73-12 in the proposed rule text and is deferring action on other specified requests in PRM-73-12, specifically those aspects of PRM-73-2 which deal with air-based attacks."

45. No. 2 - in NRC Response, delete second sentence (The NRC is ... 73.1).

46. No. 3 - in NRC Response, 1st sentence, delete from "although" to "adequate."

47. No. 4 - in NRC Response, delete the 1st sentence (The NRC ... comments.) Delete "First," at beginning of second sentence so that the paragraph starts "The requirements....", delete the parenthetical in second sentence, and delete the last two sentences (Nor does the NRC ... requirements.).

Changes to the Letter to Petitioner (Attachment 5 to SECY)

48. In the third paragraph, insert as next to last sentence: "The NRC is deferring action on the other requests in PRM-73-12, specifically those aspects of PRM-73-12 which deal with the defense of nuclear power plants against aircraft, and intends to address those issues as part of the final action on this proposed rule."

49. Delete last three paragraphs.

The SRM of June 28, 2005 for SECY-050048, concerning PRM-50-80 in part, is superceded to the extent that the proposed Federal Register notice and Letter to Petitioner addressed in that SRM should be changed to be consistent with the action being taken in regard to PRM-73-12. Specifically, the responses regarding the evaluation of the second proposed action in PRM-50-80, which concerns aerial threats or hazards, should be changed to indicate that the NRC is deferring resolution of the second proposed action and intends to address that request when the NRC responds to comments on its proposed DBT rule.

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

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