

February 4, 2009

MEMORANDUM TO: Chairman Klein
Commissioner Jaczko
Commissioner Lyons
Commissioner Svinicki

FROM: R. W. Borchardt */RA Bruce Mallett Acting for/*
Executive Director for Operations

SUBJECT: DESIGNATION OF THE OFFICE OF NEW REACTORS AS LEAD
OFFICE FOR NEW AND ADVANCED REACTOR-RELATED
RULEMAKINGS

Purpose:

The purpose of this memorandum is to request that the Commission approve the designation of the Office of New Reactors (NRO) as lead office for design certification (DC) and other rulemaking activities related to new and advanced reactors.

Background:

NRO was formed following the Commission decision documented in the staff requirements memorandum (SRM) dated July 21, 2006, related to SECY-06-0144, "Proposed Reorganization of the Office of Nuclear Reactor Regulation (NRR) and Region II," dated June 24, 2006. When SECY-06-0144 was proposed, it was not readily apparent that NRO would require several concurrent rulemakings for DCs in addition to work on Title 10 of the *Code of Federal Regulations*, Part 52 (10 CFR Part 52), "Licenses, Certifications, and Approvals for Nuclear Power Plants," supplemental rulemakings and possibly establishing technical bases for a risk-informed and performance-based approach for licensing advanced reactors. Consequently, SECY-06-0144 stated that NRO would rely upon the established infrastructure within NRR for rulemaking as well as other areas such as generic communications. In addition to approving the staff's proposal, including NRR support for new reactor rulemakings, the SRM for SECY-06-0144 also directed the staff to perform self-assessments to promote continued improvement and ensure the reorganization resulted in the level of accountability and effectiveness envisioned by the Commission.

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Discussion:

The staff has assessed possible improvements in the assignment of rulemaking tasks for NRO and NRR determined that the organizations could be more effective if NRO assumed full responsibility for all rulemaking activities related to new and advanced reactors. As the process is currently structured, NRO is responsible for preparing the technical basis (the majority of the work in developing the rulemaking package) for design certification rulemakings (DCRs) and other rulemakings for new and advanced reactors. NRR is responsible for providing project management support, administrative support, and assistance in selected parts of the rulemaking package such as regulatory analyses. While this arrangement was successful in the recent development of the rule requiring consideration of aircraft impacts for new nuclear power reactors, the process and assignments resulted in some duplication of efforts and introduced additional coordination issues for both offices. For example, staff and managers in both offices needed to review preliminary drafts, participate in meetings and briefings, and track the progress and issues associated with the rulemaking. Both offices also needed to reassign personnel and revise priorities for other projects when the Commission directed the staff to proceed with the aircraft impact assessment rulemaking.

In addition to the aircraft impact assessment rulemaking, the staff has assessed, as part of the agency's lean six sigma program, the process for the upcoming DCRs and determined that dedicated project management support within NRO for those rulemakings would be a more effective process than the current division of responsibilities between offices. DCRs are referenced in, and affect the schedules of, combined license (COL) applications that are being reviewed by NRO concurrently with the design reviews that will form the basis for the related DCRs. As a result, it was determined that a dedicated, focused approach by NRO, with dedicated rulemaking staff working with the staff completing the reviews of the DC and COL applications, would enhance the DC and COL licensing processes. The reviews to date have shown that the schedules and activities related to design reviews and COL applications are subject to changes that in turn require the staff to shuffle projects and establish new priorities. NRO can appropriately manage the resources needed for these processes and thereby avoid other project offices needing to adjust priorities and assignments to support changing DC and COL application reviews and DCR schedules or introducing conflicting priorities between offices.

NRO is currently scheduled to lead a number of agency rulemaking activities. Within the next several years, the staff is expecting to promulgate six rulemakings in support of new DCs, amendments to DCs, and a renewal of a DC. The staff is also planning on proposing a supplementary rule to 10 CFR Part 52 and possibly other rulemakings to support new reactor licensing actions. Further, the U.S. Nuclear Regulatory Commission may receive petitions for rulemaking to 10 CFR Part 52 based on increased public interest in new reactor licensing activities. Finally, NRO has recently taken over project management of advanced reactor programs. The agency may, in the longer term, wish to pursue changes to its regulations to facilitate the licensing process for advanced reactors. Thus, there are a sufficient number of significant rulemaking activities, either planned or anticipated, for new and advanced reactors, to warrant the designation of NRO as a lead rulemaking office.

The designation of NRO as a lead rulemaking office and the assignment of project management responsibilities to NRO is consistent with the SRM dated September 16, 1997, issued in response to SECY-97-167, "DSI 22 Implementation," dated July 30, 1997. In the SRM, the Commission directed the staff to "expeditiously transfer all rulemaking functions and responsibilities to the program offices." NRO has demonstrated that it has the necessary technical, licensing, and project management expertise to perform the rulemaking function for

new and advanced reactors. Examples include NRO leading recent activities such as the 10 CFR Part 52 rulemaking, the limited work authorization rulemaking, the aircraft impact assessment rulemaking, and the lean six sigma evaluation of the DCR process. NRO is currently preparing an office instruction similar to NRR's LIC-300, "Rulemaking Procedures," as well as preparing templates and other documents needed for its rulemaking activities. The staff determined that this infrastructure is needed to support NRO's current role of being responsible for the technical bases for rulemakings related to new reactors and otherwise leading efforts for new and advanced reactors. To minimize development efforts and to ensure consistency, the NRO staff is adopting existing procedures and processes and will continue its participation in the interoffice rulemaking coordinating committee (RCC), which is led by the Office of Administration (ADM).

The staff has discussed the designation of NRO as a lead rulemaking office in forums such as the RCC and reached a consensus that the assignment of rulemakings to NRO is appropriate under the current circumstances and work loads. Some support offices (e.g., the Office of General Counsel and the ADM) may experience some additional needs to determine priorities if rules from different offices are simultaneously coordinated with those support offices. Such issues can, however, be anticipated and managed through close communication among offices and routine meetings of the RCC. The staff has concluded that this realignment of rulemaking functions would have no significant effect on overall agency resources for promulgating rules, including resources for program, coordinating, and support offices.

Approval of NRO as a lead office for new and advanced reactor rulemakings would not reduce or negate the coordination of rulemakings between NRR and NRO. The coordination of NRO rulemakings with NRR, and vice versa, is essential to ensuring that both offices have a clear understanding of changes to regulatory requirements that impact each other's programs. Therefore, the NRR and NRO rulemaking staff would maintain a close working relationship and coordinate reviews of rulemakings. NRO would continue to attend meetings of the RCC, amending its role from a support/technical office to a lead office.

For Fiscal Year (FY) 2009, NRO's budget of 2.2 FTE includes resources to develop the infrastructure for and to manage all currently anticipated DCR projects, manage 10 CFR Part 52 petitions for rulemaking (if submitted), and support other agency rulemaking activities. NRO has requested 2.2 FTE in its FY 2010 budget, unchanged from FY 2009, and will shift its focus from rulemaking infrastructure and support to work on NRO's highest priority rulemakings. Resources for FY 2011 and beyond will be requested through the Planning, Budgeting, and Performance Management Process. NRR has reprogrammed its rulemaking resources from including support to NRO for new and advanced reactor rulemakings to supporting other reactor-related rulemaking activities.

SECY, please track.

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