

RULEMAKING ISSUE NOTATION VOTE

April 25, 2003

SECY-03-0067

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

SUBJECT: PROPOSED AMENDMENTS TO 10 CFR PART 50, APPENDIX E RELATING TO (1) NRC APPROVAL OF CHANGES TO EMERGENCY ACTION LEVELS (EAL) PARAGRAPH IV.B. AND (2) EXERCISE REQUIREMENTS FOR CO-LOCATED LICENSEES, PARAGRAPH IV.F.2.

PURPOSE:

To obtain Commission approval to publish proposed amendments to 10 CFR Part 50, Appendix E relating to (1) Nuclear Regulatory Commission (NRC) approval of changes to Emergency Action Levels (EAL) paragraph IV.B. and (2) exercise requirements for co-located licensees, paragraph IV.F.2., in the Federal Register for a 75-day public comment period.

BACKGROUND:

The staff is proposing two amendments to the Commission's emergency planning regulations. The background for each revision follows:

- (1) NRC Approval of Changes to Emergency Action Levels (EALs) 10 CFR 50, Appendix E Paragraph IV.B:

EALs are thresholds of plant parameters (such as containment pressure and radiation levels) utilized to classify events at nuclear power plants into one of four emergency classes (Notification of Unusual Event, Alert, Site Area Emergency, or General Emergency). EALs are

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required by Appendix E to 10 CFR Part 50 and §50.47(b)(4) and are contained in licensees' emergency plans and licensees' emergency plan implementing procedures.

Section §50.54(q) states that licensees can make changes to their emergency plans without Commission approval "only if the changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of §50.47(b) and the requirements of Appendix E." However, Appendix E to 10 CFR Part 50 states that "EALs shall be discussed and agreed on by the applicant and State and local governmental authorities and approved by NRC". Because EALs are required to be included in the emergency plan, the issue is whether all changes to EALs incorporated into the emergency plan are subject to the change requirement in 10 CFR 50.54(q), or to the more restrictive change requirement in Appendix E (requiring NRC approval of all changes).

The current industry practice, in general, has been to make revisions to EALs and to implement them without requesting NRC approval, after determining that the changes do not reduce the effectiveness of the emergency plan, in accordance with §50.54(q). When the determination is made that a proposed change constitutes a decrease in effectiveness, licensees submit the changes to NRC for review and approval. Additionally, if a change involves a major change to the EAL scheme, for example, changing from an EAL scheme based on NUREG-0654 guidance to an EAL scheme based on NUMARC/NESP-007 guidance, it has been the industry practice to seek NRC approval before implementing the change.

During the staff's development of guidance for regional inspectors on inspection of emergency plan changes, questions were raised regarding whether the industry practice of implementing revised EALs before receiving NRC approval complied with the requirements of Appendix E to 10 CFR Part 50. To resolve these questions, the staff sought advice from the Office of the General Counsel (OGC) as to whether the industry practice met the intent of the regulations in Appendix E or whether all revisions to EALs must be approved by the NRC before implementation. OGC advised the staff that while the regulations are unclear as to whether prior NRC approval is required for all EAL changes, the regulations in Appendix E are best interpreted to require prior NRC approval for all changes to a licensee's EALs. Believing that this approach would increase the regulatory burden on licensees with little safety benefit, the staff submitted a rulemaking plan, SECY-01-0192, "Rulemaking Plan: Revision of Appendix E to 10 CFR Part 50," to clarify and reconcile the requirements for NRC approval of EALs. In a November 6, 2001, Staff Requirements Memorandum (SRM) the Commission approved the staff's recommendations.

The staff has found that current industry practice complies with the requirements of §50.54(q) for EAL changes. In practice, the staff reviews all EAL revisions, either before or after licensee implementation. EAL changes submitted by licensees for NRC approval before implementation are reviewed by Office of Nuclear Reactor Regulation (NRR) staff and the staff's review is documented in a safety evaluation. Other EAL changes are reviewed as part of the regional inspection of licensees' emergency preparedness programs (after the licensee implemented the EAL changes) and the inspection results are documented in an inspection report.

(2) Exercise Requirements for Co-Located Licensees, 10 CFR Part 50, Appendix E Paragraph IV.F.2.

In a letter dated June 29, 2000, the Union of Concerned Scientists stated that 10 CFR 50, Appendix E, requires each licensee at each site to conduct a full participation exercise of its emergency plan every two years, and requested that the NRC not permit the restart of Indian Point 2 until the completion of such an exercise.

On October 6, 2000, the NRC noted that the Union of Concerned Scientists identified an ambiguity in the emergency preparedness regulations with regard to the level and frequency of exercise participation between co-located licensees and that the staff would evaluate whether a clarification to the regulations was warranted. The staff has determined that a clarification to the regulations relating to co-located licensees is necessary and it is included in this rulemaking package.

DISCUSSION:

(1) NRC Approval of Changes to Emergency Action Levels, Paragraph IV B.

The staff is proposing to revise the requirements, in Appendix E, to clarify that NRC approval would not be necessary for minor EAL revisions that meet the criterion in §50.54q. The proposed amendment is consistent with current licensee practice.

The proposed rule would require NRC approval of EALs for applicants for initial reactor operating licenses and initial combined licenses (COL) and for licensees who are converting from one EAL scheme (e.g., NUREG-0654 based) to another EAL scheme (e.g., NUMARC/NESP-007 based) as well as revisions to EALs that decrease the effectiveness of the emergency plan. This practice has been shown to maintain safety and reduce unnecessary regulatory burden for licensees in revising their EALs. Licensees can make minor EAL changes promptly and efficiently without undue NRC oversight. The staff believes an appropriate level of NRC oversight would be maintained because a review of all licensee EAL changes is part of the baseline inspection program, including confirmation of the licensees' determination that the changes did not decrease the effectiveness of the emergency plan. For EAL conversions from a NUREG-0654 based scheme to a NUMARC/NESP-007 based scheme, NRR staff would continue to review and give prior approval before licensee implementation of the changes. The staff and the industry believe, and extensive experience has shown, that conversions to a new EAL scheme require prior NRC review and approval. Prior approval provides assurance that licensees can make proper and timely classifications and notification of an event after adopting a new scheme. By ensuring the efficacy of the EALs, safety and public confidence are maintained.

This proposed rule change is consistent with Commission direction contained in the SRM for SECY-01-0192 dated November 6, 2001. As also directed in that SRM, Enforcement Guidance Memorandum EGM 02-001 was published March 1, 2002, to provide guidance for exercising enforcement discretion regarding past violations of 10 CFR Part 50 Appendix E relating to EAL changes until the rule is finalized.

2. Exercise Requirements for Co-Located Licensees, Paragraph IV.F.2.

The NRC's current regulations contained in 10 CFR Part 50, Appendix E require that the offsite emergency plans for each site shall be exercised biennially with the full (or partial) participation of each offsite authority having a role under the plans, and that each licensee shall conduct an exercise of its onsite emergency plan every two years, an exercise that may be included in the full participation biennial exercise. This exercise requirement, though straight forward on its face, has implementation and compliance problems when two licensees occupy the same site thereby requiring the same state to conduct a full participation exercise every year.

There is currently only one site with two licensees, Nine Mile Point (NMP) and FitzPatrick (JAF).

However, the current trend in the nuclear industry is to locate new plants on currently approved sites, possibly with different licensees, thus the need for the attached rule change. The staff believes that the unique considerations raised by co-located licensees were not considered when the emergency planning requirements were codified in 1980.

The staff has concluded that the current practice of co-located licensees alternating participation in the full (or partial) participation biennial exercises of the offsite plans, with the current level of other activities and interactions between the licensees and offsite authorities at the affected site is acceptable. In addition, the staff is articulating in this rulemaking package the emergency preparedness activities and interactions with offsite authorities that shall be conducted that would test and maintain interface functions to supplement the partial participation exercise in the period between exercises for co-located licensees, as well as providing a definition for co-located licensees in the regulations. Likewise, paragraph IV.F, 2.c. would be amended to clarify that the exercise requirements relate to "licensees" and not "sites."

The Federal Register notice requests, public comment on two subjects: (1) the applicability of this proposed revision to the regulations for three or more licensees located at a single site; and (2) the elements of the definition of "co-located" licensees.

The proposed rule change is consistent with Commission direction contained in the SRM dated August 30, 2001 for SECY-01-0131, "Rulemaking Plan: Revision of Appendix E, Section IV.F.2, to 10 CFR Part 50, concerning clarification of Emergency Preparation Exercise Participation Requirements for Co-located Licensees."

RESOURCES:

Approximately 1.8 full-time equivalent (FTE) direct staff effort has been budgeted to conduct this rulemaking.

COORDINATION:

OGC has no legal objection to this rulemaking. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objection to its content. FEMA has received an advance copy of this rulemaking package.

Relating to the co-located licensee portion of this proposed rulemaking package, the staff has previously coordinated the approach presented in this paper with FEMA and the State of New York, Emergency Management Office. Both of these organizations expressed support for the staff's recommended approach.

The Committee to Review Generic Requirements and Advisory Committee on Reactor Safeguards have reviewed this Commission paper and agree to delay their review of the proposed rule change until public comments have been resolved and the final rule is prepared.

RECOMMENDATION:

That the Commission:

1. Approve publication of the proposed rule changes in the Federal Register Notice (Attachment 1).
2. Certify that this rule, if promulgated, will not have a negative economic impact on a substantial number of small entities in order to satisfy requirements of the Regulatory Flexibility Act, 5.U.S.C. 605(b).2.

Note

1. The rulemaking will be published in the Federal Register Notice with a 75-day public comment period.
2. A draft regulatory analysis is included in the Federal Register Notice.
3. The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification regarding economic impact on small entities and the basis for it, as required by the Regulatory Flexibility Act.
4. Copies of the proposed rule Federal Register Notice will be distributed to all stakeholders.
5. A press release will not be issued.
6. The appropriate congressional committees will be informed.

/RA/

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Attachment:

1. Proposed Federal Register Notice

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Attachment:

1. Proposed Federal Register Notice

Adams Accession Number:	Package:	ML022310066
	Commission Paper:	ML030700324
	SRM relating to SECY-01-0131:	ML012430081
	SRM relating to SECY-01-0192:	ML013100417
	FRNotice:	ML030700333

*See previous concurrence

**Concurred via Email

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