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## RULEMAKING ISSUE

(NEGATIVE CONSENT)

November 15, 1996

SECY-96-236

FOR: The Commissioners

FROM: James M. Taylor  
Executive Director for Operations

SUBJECT: RULEMAKING PLAN FOR AMENDMENTS TO 10 CFR 50.54(t),  
50.54(p)(3) AND 73.55(g)(4), RESOLUTION OF VEPCO PETITIONS  
FOR RULEMAKING, (PRM 50-59 AND PRM 50-60) RELATING TO  
PROGRAM REVIEWS AND AUDITS FOR THE SAFEGUARD CONTINGENCY  
PLANS, THE EMERGENCY PREPAREDNESS PROGRAM, AND THE SECURITY  
PROGRAM

### PURPOSE:

To inform the Commission that the EDO has signed the Rulemaking Plan and intends to proceed with development of the rule change which will amend 10 CFR 50.54(p)(3), 50.54(t), and 73.55(g)(4) relating to program reviews and audits for the safeguards contingency plans, the emergency preparedness program, and the security program.

### BACKGROUND:

On January 7, 1994, the Commission docketed a petition for rulemaking from Virginia Power (PRM 50-59) to change the required frequency of audits for safeguards contingency plans and security programs at nuclear power reactors. In a separate petition for rulemaking (PRM 50-60), docketed on January 19, 1994, Virginia Power also requested that the NRC amend the required audit frequency for the emergency preparedness program. The Commission's regulations currently require power reactor licensees to conduct independent reviews and audits of each of these plans and programs at least every 12 months. Virginia Power requests that the audit frequency be changed to nominally every 24 months but does not preclude additional audits if

### CONTACT:

Mike Jamgochian, RES/DRA  
415-6534

NOTE: TO BE MADE PUBLICLY AVAILABLE WHEN  
THE FINAL SRM IS MADE AVAILABLE

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L-4-1 PI 50 Licensing of Production  
x L-4-1 PI 73 - Physical Protection  
OF SRM  
x O & M - 6 CommisS.

performance warrants. The attached rulemaking plan addresses the issues raised in both of these petitions.

Along with the petitions for rulemaking related to security and emergency preparedness, Virginia Power submitted a third petition on January 19, 1994 (PRM 26-1) to relax the existing audit frequency required for Fitness-for-Duty (FFD). Issues related to the FFD petition are being addressed in a separate NRC rulemaking and were included in SECY-95-262.

#### DISCUSSION:

The Virginia Power petitions request that each of the above regulations be amended to change the required audit frequency from at least every 12 months to nominally every 24 months.

The staff notes that while the petitioner refers to "audit frequency," the emergency planning regulations refer to "program reviews" while the security program and safeguards contingency plan regulations refer to "reviews" and "audits." This rule change will assure consistency between all three regulations.

In addressing the petitioners request for an audit frequency [program reviews] of nominally every 24 months, the staff elected to recommend a performance based requirement with a stipulation that the frequency of the reviews be at least every 24 months. By establishing a performance-based requirement, the staff's resolution to PRM 50-59 and 50-60 would be consistent with recent recommendations of the NRC Regulatory Review Group, with the National Performance Review, and with amendments being proposed to resolve the Fitness-for-Duty audit frequency petition for rulemaking, PRM-26-1, that was provided to the Commission in SECY-95-262.

The proposed revision will also clarify that the necessity for more frequent, focused reviews and audits will be based on an assessment by the licensee against performance indicators or a significant change in personnel, procedures, equipment, or facilities. These changes would grant the two VEPCO petitions for rulemaking (PRM-50-59 and 50-60) and would promote performance-based, rather than compliance-based reviews and audits. The audits and program reviews would be conducted so that all program elements are adequately covered at least every 24 months. The proposed rule change will further clarify that programs must be audited and reviewed following a significant change in personnel, procedures, or equipment as soon as reasonably practicable, but no later than 12 months after the changes. The purpose of these focused reviews and audits would be to ensure that changes have not adversely affected the operation of the particular program element or function in question.

Accordingly, these proposed reviews and audit revisions would ensure that whatever programmatic problems may result from significant changes in personnel, procedures, or equipment will be detected and corrected on a timely basis.

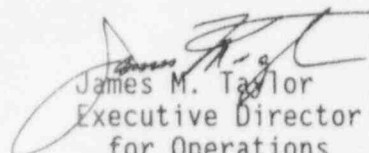
The rulemaking plan for these proposed changes has been developed using the guidance in NRC Management Directive 6.3, "The Rulemaking Process."

RECOMMENDATION:

I have signed the Rulemaking Plan and intend to proceed with the development of the rule unless otherwise directed by the Commission within 10 days from the date of this paper.

COORDINATION:

The Office of the General Counsel has no legal objection to the Rulemaking Plan.

  
James M. Taylor  
Executive Director  
for Operations

Attachment:  
Rulemaking Plan

SECY NOTE: In the absence of instructions to the contrary, SECY will notify the staff on Monday, December 2, 1996 that the Commission, by negative consent, assents to the action proposed in this paper.

DISTRIBUTION:

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RULEMAKING PLAN  
CHANGES TO 10 CFR 50.54(p)(3), 50.54(t) and 73.55(g)(4),  
RESOLUTION OF VEPCO PETITIONS FOR RULEMAKING,  
(PRM 50-59 AND PRM 50-60)  
RELATING TO PROGRAM REVIEWS AND AUDITS FOR THE SAFEGUARDS CONTINGENCY PLANS,  
THE EMERGENCY PREPAREDNESS PROGRAM AND THE SECURITY PROGRAM

Lead Office: Office of Nuclear Regulatory Research

Staff Contact: Mike Jamgochian, RDB

Concurrences:

See Attached  
D. Morrison, RES

11/13/91  
Date

See Attached  
R. Bangart, OSP

7/19/96  
Date

See Attached  
W. Olmstead, OGC

7/19/96  
Date

See Attached  
E. Jordan, AEOD

7/19/96  
Date

See Attached  
W. Russell, NRR

7/19/96  
Date

Approval:

J. Taylor  
J. Taylor, EDO

11/14/96  
Date

## RULEMAKING PLAN

### CHANGES TO 10 CFR 50.54(p)(3) 50.54(t) and 73.55(g)(4), RESOLUTION OF VEPCO PETITIONS FOR RULEMAKING, (PRM 50-59 AND PRM 50-60) RELATING TO PROGRAM REVIEWS AND AUDITS FOR THE SAFEGUARDS CONTINGENCY PLANS, THE EMERGENCY PREPAREDNESS PROGRAM AND THE SECURITY PROGRAM

#### Regulatory Problem and Issues to be Resolved

On January 7, 1994, the Commission docketed a petition for rulemaking from Virginia Power (PRM-50-59) to change the required frequency of audits [program reviews] for safeguards contingency plans and security programs at nuclear power reactors. In a separate petition for rulemaking (PRM-50-60), docketed on January 19, 1994, Virginia Power also requested that the NRC amend the required audit frequency [program reviews] for the emergency preparedness program. The Commission's regulations currently require power reactor licensees to conduct independent reviews and audits of each of these programs at least every 12 months. Virginia Power requests that the review frequency be changed to nominally every 24 months. This rulemaking plan addresses the issues raised in both of these petitions.

The staff notes that while the petitioner refers to "audit frequency," the emergency planning regulations refer to "program reviews" while the security program and safeguards contingency plan regulations refer to "reviews" and "audits." This rulechange will assure consistency between all three regulations.

Along with the petitions for rulemaking related to security and emergency preparedness, Virginia Power submitted a third petition (PRM-26-1) to relax the existing audit [program reviews] frequency required for Fitness-for-Duty (FFD). Issues related to the FFD petition are being addressed in a separate NRC rulemaking which was included in SECY-95-262.

#### Current Rule Requirements

Requirements pertaining to the frequency of reviews of safeguards contingency plans by power reactor licensees are contained in 10 CFR 50.54(p)(3). This section requires that licensees provide for a review at least every 12 months of the safeguards contingency plan by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. This review must include a review and audit of safeguards contingency procedures and practices, an audit of the security system testing and maintenance program, and a test of the safeguards systems along with commitments established for response by local law enforcement authorities.

The requirements for security program reviews and audits are contained in 10 CFR 73.55(g)(4). Similar to the regulations for safeguards contingency plans, Section 73.55(g)(4) requires that the security program be reviewed at least every 12 months by individuals independent of both security program management and personnel who have direct responsibility for the implementation



of the security program. The security program review must include an audit of security procedures and practices, an evaluation of the effectiveness of the physical protection system, an audit of that system's testing and maintenance program, and an audit of commitments established for response by local law enforcement authorities.

Requirements pertaining to the frequency of program reviews (audit frequency) of the emergency preparedness program by nuclear power reactor licensees are contained in 10 CFR 50.54(t). This section requires that licensees provide for a review of its emergency preparedness program at least every 12 months by persons who have no direct responsibility for implementation of the emergency preparedness program. The review shall include an evaluation for adequacy of interfaces with State and local governments and of licensee drills, exercises, capabilities and procedures. The results of the review, along with recommendations for improvements, shall be documented, reported to the licensee's corporate and plant management, and retained for a period of 3 years.

#### Regulatory Problem to be Resolved

The Virginia Power petitions request that each of the above regulations be amended to change the required audit frequency from at least every 12 months to nominally every 24 months. The staff is considering changing the regulations for the following reasons.

First, since these rules were first implemented, industry performance has improved to the point that annual audits [program reviews] are not necessary to ensure that safeguards contingency plans, security programs, or the emergency preparedness programs are adequate. This is evidenced by the high SALP ratings that were consistently given in the categories of EP and Security. In effect, the current requirements for annual reviews and audits produce a benefit that may not be commensurate with the expense.

Second, the current requirements for annual reviews and audits result in a lack of licensee flexibility, which can compromise the completion of effective audits. Licensees are presently limited in their ability to allocate audit resources according to safety needs and priorities, since available resources and personnel must be committed according to a set review and audit schedule rather than used to monitor or assess other areas of concern. In addition, licensees are not always able to conduct reviews and audits at the same time as other activities that would permit a better review and evaluation of plant systems, such as separately scheduled drills, inspections, or operational changes. This can lead to meaningless reviews and audits or the need to perform extra audits to reconfirm that a program is still adequate after there has been a change. It can also lead to auditing prior to the completion of corrective actions, when waiting a short time could allow a review and audit to be performed when the effectiveness of a corrective action can be evaluated.

Third, the current requirements concerning review and audit frequency are inconsistent with recent regulatory trends, which have moved toward performance-based reviews and audits that focus attention on demonstrated weaknesses rather than schedule-driven needs. By establishing performance-based reviews and audits the staff's resolution to PRM-50-59 and PRM-50-60 would be consistent with recent recommendations of the NRC Regulatory Review Group, with the National Performance Review, and with amendments that were proposed in SECY-95-262 to resolve the FFD audit frequency petition for rulemaking, PRM-26-1.

The staff notes that the Commission is continuing to move towards a performance-based regulatory approach in other rulemakings. Performance-based regulations are intended to give regulated entities clear guidance as to the objective of those regulations, but not to be overly prescriptive in mandating specific means by which those entities must achieve the objectives. This approach is intended to promote efficiencies in nuclear facility operations, while maintaining the highest standards of public health and safety. Both NRC policy and Congressional directives emphasize the need for the Commission to move toward performance-based regulations.

#### Assessment of Likely Impacts on Licensees and Cost Effectiveness

The regulations would be revised to require that licensees conduct program reviews and audits at least every 24 months. The proposed revision will also clarify that the necessity for more frequent, focused audits will be based on an assessment by the licensee against performance indicators or a significant change in personnel, procedures, equipment, or facilities. These changes are consistent with the requested changes in two petitions for rulemaking (PRM-50-59 and PRM-50-60) and will promote performance-based, rather than compliance-based review and audits. The review and audit program would be conducted so that all program elements are adequately covered at least every 24 months. The proposed changes will further clarify that programs must be reviewed and audited following a significant change in personnel, procedures, or equipment as soon as reasonably practicable, but no later than 12 months after the changes. The purpose of these focused audits would be to ensure that changes have not adversely affected the operation of the particular program element or function in question.

Accordingly, these proposed review and audit revisions would ensure that whatever programmatic problems may result from significant changes in personnel, procedures, or equipment will be detected and corrected on a timely basis.

The proposed changes represent a potential cost savings for licensees in certain areas. Information provided by licensees on the cost for conducting reviews and audits of the licensee emergency preparedness and safeguards programs varies but is estimated to cost approximately \$15,000 per annual

review and audit. This would represent a 50 percent savings to licensees in the emergency preparedness and safeguards program audit costs, or an estimated \$15,000 per audit every 2 years. This relates to a total cost savings to the industry of approximately \$1.1M per year.

#### OGC's Legal Sufficiency Analysis Demonstrating that no Known Basis Exists for Legal Objection

The proposed approach is largely administrative in nature, changing only the frequency of safeguards contingency plan emergency preparedness program and security program reviews and audits and not the content of those audits [program review]. No significant legal impediments to promulgation of a rule drafted along the lines discussed in this plan are anticipated. The proposed change, because it is a relaxation of current requirements, would not constitute a backfit under 10 CFR 50.109. OGC has not identified any environmental or Paper Work Reduction Act issues that would present significant difficulties in pursuing the proposed course of action.

Since the proposed rulemaking plan would also address issues related to two petitions for rulemaking, the staff will need to assure that appropriate procedural actions are taken to close the actions associated with those petitions. These actions include specifically denying or granting the petition for rulemaking, either in the Federal Register notice associated with the proposed rulemaking or in a separate Federal Register notice, and informing the petitioner of the Commission's decision. The detailed procedures for responding to the rulemaking petition are contained in Part II of the Regulations Handbook (NUREG/BR-0053, Rev. 3).

#### Agreement State Considerations

None. Agreement States do not license power reactors.

#### Supporting Documents

It is anticipated that a regulatory guide may be necessary.

#### Resources Required

Estimated resources to conduct this rulemaking are 1.0 FTE. These resources are within existing budget allocations.

#### Lead Office Staff and Staff Within Each Office Who Will be Involved

| <u>Proposed Staff</u>       | <u>Concurrence Authority</u> |
|-----------------------------|------------------------------|
| Mike Jamgochian, RES (lead) | (Office Directors)           |
| Kathryn Winsberg, OGC       |                              |
| Falk Kanter, NRR            |                              |
| Loren Bush, NRR             |                              |



Is It Recommended that the EDO Issue the Rule in Accordance with Management Directive 9.17

Yes. Changing the frequency of EP or Safeguard reviews and audits does not involve a significant issue of policy.

Use of Steering Group

No steering group will be used for this rulemaking.

Enhanced Public Participation

No enhanced public participation, special measures, direct final rule change is deemed to be necessary at this time.

Schedule

|  |          |
|--|----------|
| Office concurrence on Plan (RES, OGC, etc.) complete                                       | 1/31/96  |
| Rulemaking Plan to EDO - Complete  | 7/31/96  |
| Revised Rulemaking Plan to the EDO   | 8/15/96  |
| EDO Approval of Plan   | 9/1/96   |
| Proposed Rulemaking package<br>to RES Office Director                                      | 11/1/96  |
| Proposed Rulemaking package receives<br>Office Concurrence (OGC, NRR, NMSS, AEOD) Complete | 11/20/96 |
| CRGR/ACRS Review Complete  | 12/15/96 |
| Final Package (Proposed Rule)<br>Sent to EDO   | 1/30/97  |
| Commission approval and publish<br>in FR for Public Comment                                | 2/28/97  |
| Public Comment Period Ends   | 5/20/97  |