

RULEMAKING ISSUE

(Affirmation)

November 8, 2004

SECY-04-0211

FOR: The Commissioners

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

SUBJECT: FINAL AMENDMENTS TO 10 CFR PART 50, APPENDIX E, RELATING TO
(1) NUCLEAR REGULATORY COMMISSION REVIEW OF CHANGES TO
EMERGENCY ACTION LEVELS, PARAGRAPH IV.B AND (2) EXERCISE
REQUIREMENTS FOR CO-LOCATED LICENSEES, PARAGRAPH IV.F.2

PURPOSE:

To obtain Commission approval to publish, in the *Federal Register*, final amendments to 10 CFR Part 50, Appendix E, relating to (1) Nuclear Regulatory Commission (NRC) approval of changes to emergency action levels (EALs), paragraph IV.B, and (2) exercise requirements for co-located licensees, paragraph IV.F.2.

SUMMARY:

The NRC is amending its emergency planning regulations governing the domestic licensing of production and utilization facilities. The final rule revises the current regulations on NRC approval of licensee changes to EALs and clarifies exercise requirements for co-located licensees.

BACKGROUND:

In the June 18, 2003, staff requirements memorandum (SRM) for SECY-03-0067, the Commission approved publication, with modifications, of "Proposed Amendments to

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10 CFR Part 50, Appendix E Relating to (1) NRC Approval of Changes to EALs, Paragraph IV.B. and (2) Exercise Requirements for Co-Located Licensees, Paragraph IV.F.2.” The proposed rule was published in the *Federal Register* on July 24, 2003 (68 FR 43673), for a 75-day public comment period that expired on October 7, 2003. The background for each revision follows:

(1) NRC Review of Changes to EALs, 10 CFR Part 50, Appendix E, Paragraph IV.B

EALs are thresholds of plant parameters (such as containment pressure and radiation levels) used 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 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 “emergency action levels 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 §50.54(q) or to the more restrictive change requirement in Appendix E (requiring NRC approval of all changes).

In general, current industry practice has been to make revisions to EALs and to implement them without requesting NRC approval after determining that the changes do not decrease 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, or if an alternate method for complying with the regulations is proposed, licensees submit the changes to the Commission 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/FEMA-REP-1, “Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,” to an EAL scheme based on NUMARC/NESP-007, “Methodology for Development for Emergency Actions Levels,” or NEI-99-01, “Methodology for Development of Emergency Action Levels,” the industry practice is to seek NRC review and approval before implementing the change.

The staff has found that the current industry practice complies with the requirements of §50.54(q) for EAL changes. EAL changes submitted by licensees for NRC approval before implementation are reviewed and approved by the Office of Nuclear Reactor Regulation (NRR) staff and are documented in a safety evaluation. Other EAL changes are reviewed as part of the regional inspection of licensees’ emergency preparedness programs (after the licensee has implemented the EAL changes).

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

Paragraph IV.F.2 of Appendix E, to Part 50, currently provides that the “offsite plans for each *site* shall be exercised biennially” (emphasis added) with the full or partial participation of each offsite authority having a role under the plans and that “each licensee at each site” shall conduct an exercise of its onsite emergency plan every 2 years, an exercise that may be part of the full or partial participation biennial exercise. Thus, paragraph IV.F.2 is ambiguous about the emergency preparedness exercise requirements where multiple nuclear power plants, each licensed to different licensees, are co-located at the same site: whether each licensee must participate in a full or partial participation exercise of the offsite plan every 2 years, or whether the licensees may alternate their participation such that a full or partial participation exercise is held every 2 years and each licensee (at a two-licensee site) participates in a full or partial participation exercise every 4 years.

The staff believes that the ambiguity in the current regulation should be interpreted such that each nuclear power plant licensee co-located on the same site and meets the definition of a co-located licensee, must participate in a full or partial participation offsite exercise every 2 years (and that each offsite authority is to participate on either a full or partial participation basis in each licensees’ biennial offsite exercise). This clarification to the regulations is included in this rulemaking package.

DISCUSSION:

After evaluating public comments on the proposed rule change, the NRC staff developed the attached final rule. Publication of the final rule (Attachment 2) would implement the Commission’s decision outlined in the SRM for SECY-03-0067 dated June 18, 2003, by amending 10 CFR Part 50, Appendix E, to require Commission approval of EALs for applicants for initial reactor operating licenses and initial combined licenses (COLs) and for licensees who are converting from one EAL scheme (e.g., NUREG-0654 based) to another EAL scheme (e.g., NUMARC/NESP-007 or NEI-99-01 based) or are proposing an alternate method for complying with the regulations. Licensees must also obtain Commission approval for revisions to EALs that decrease the effectiveness of the emergency plan. Licensees use of the 50.54(q) process to make EAL changes 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.

Additionally, the final rule codifies the current practice of co-located licensees alternating participation in the full or partial participation biennial exercises of the offsite plans, accepting the current level of other activities and interactions between the licensees and offsite authorities at the affected site. The staff is also providing a definition of co-located licensees in the regulations.

Public Comment Evaluation

On July 24, 2003 (68 FR 43673), the Commission published a proposed rulemaking and requested public comments by October 7, 2003. Seven comment letters were received. One comment letter was from a member of the public who thought that the proposed rule was

unnecessary. Six comment letters were from utilities that were in favor of the proposed rule changes. The comment letters provided clarifications to the proposed amendments. Details of the comments received are given in the Supplementary Information section of the final rule (Attachment 1).

Final Rule

The final rule is identical (with only minor clarification changes) to the proposed rule except that another EAL scheme (NEI-99-01) is provided as another example of when NRC review of EAL changes is necessary.

RESOURCES:

Approximately 1.8 full-time equivalent direct staff effort has been budgeted for this rulemaking.

COORDINATION:

The Office of General Counsel 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. The Federal Emergency Management Agency (FEMA) has received an advance copy of this rulemaking package. The Committee to Review Generic Requirements has endorsed the final amendments and the regulatory guide.

RECOMMENDATION:

That the Commission:

1. Approve for publication in the *Federal Register* the final rulemaking on 10 CFR Part 50, Appendix E (Attachment).
2. Certify that this rule will not have a significant 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.
3. Note that:
 - a. The final rule will be published in the *Federal Register* and posted on the Ruleforum.
 - b. A regulatory analysis has been prepared and is part of the rule. The analysis indicates the economic impact on licensees and other entities will not be significant. The analysis will be made available in the Public Document Room.
 - c. The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification under the Regulatory Flexibility Act and provided a copy of the final rule.

- d. The information collection requirements contained in this final rule are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Because the burden imposed by the rule is insignificant, OMB clearance is not required.
- e. A press release will not be issued.
- f. Appropriate congressional committees will be informed.
- g. Copies of the *Federal Register* notice for the final rule will be distributed to all those that commented on the proposed rule. The final rule will be sent to other interested parties upon request.
- h. All States and power reactor licensees will be sent a copy of the *Federal Register* notice upon publication.
- i. These amendments do not constitute backfits under 10 CFR 50.109.
- j. FEMA was provided with advance copies of the *Federal Register* notice, and has provided comments to the NRC that were considered by the staff in preparing this notice.
- k. Regulatory Guide 1.101, Revision 5, will be issued in order to provide guidance on an acceptable method for implementing the amended regulations (Attachment 2).

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Attachments: 1. *Federal Register* Notice
2. Regulatory Guide 1.101, Revision 5

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