UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
WASHINGTON, D.C. 20555-0001

February 24, 2006

NRC REGULATORY ISSUE SUMMARY 2006-03
GUIDANCE ON REQUESTING AN EXEMPTION FROM BIENNIAL EMERGENCY PREPAREDNESS EXERCISE REQUIREMENTS

ADDRESSEES

All holders of operating licenses for nuclear power reactors.

INTENT

The Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to provide guidance to licensees for requesting an exemption from the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix E, to hold a biennial emergency preparedness exercise. This RIS requires no action or written response on the part of an addressee.

BACKGROUND INFORMATION

The regulations for exemptions from regulatory requirements are found in 10 CFR 50.12. The regulations requiring biennial emergency preparedness exercises are found in 10 CFR Part 50, Appendix E, Section IV.F.2. The NRC staff identified the need for this guidance based on experience with reviewing exemption requests and answering questions from the nuclear power industry. Examples of circumstances that may require an exemption request are the impact of natural disasters on emergency preparedness and response personnel, real events on or near the scheduled exercise date, and unavoidable changes to schedules which result in the unavailability of a key exercise player or facility.

SUMMARY OF ISSUE

Applicable Regulations

Section IV.F.2.b of 10 CFR Part 50, Appendix E, states: “Each licensee at each site shall conduct an exercise of its onsite emergency plan every 2 years. The exercise may be included in the full participation biennial exercise required by paragraph 2.c. of this section. In addition, the licensee shall take actions necessary to ensure that adequate emergency response capabilities are maintained during the interval between biennial exercises by conducting drills, including at least one drill involving a combination of some of the principal functional areas of the licensee’s onsite emergency response capabilities.”

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Section IV.F.2.c of 10 CFR Part 50, Appendix E, requires offsite plans for each site to be exercised biennially with full or partial participation by each offsite authority having a role under the plan.

Pursuant to 10 CFR 50.12(a)(1), the Commission may grant exemptions from the requirements of 10 CFR Part 50 that are

- authorized by law,
- will not present an undue risk to public health and safety, and
- are consistent with the common defense and security.

However, pursuant to 10 CFR 50.12(a)(2), the Commission will not consider granting an exemption unless special circumstances are present.

Discussion

If an offsite authority notifies a licensee of its inability to participate in a scheduled exercise, or other events or circumstances make it impractical to conduct the exercise as scheduled, the licensee should decide whether to postpone the entire exercise or conduct the exercise without all required offsite authorities. Rescheduling an exercise within the same calendar year does not require an exemption from regulatory requirements. Regardless of whether the licensee or the offsite authority initiates a scheduling delay, the licensee is responsible for submitting an exemption request to the NRC.

An exemption to paragraphs IV.F.2.b and IV.F.2.c must be requested for the postponement of an entire biennial exercise to the following calendar year. If a licensee conducts a biennial exercise as scheduled but is unable to include all appropriate offsite authorities (eg., State Emergency Management Agency participation), only an exemption to paragraph IV.F.2.c is required.

Before submitting an exercise exemption request, a licensee should consult with the plant's Office of Nuclear Reactor Regulation (NRR) project manager, who will coordinate dialogue with appropriate NRC regional and headquarters emergency preparedness staff (including the Regional State Liaison Officer).

Content of Exemption Requests

To request NRC approval of an exercise exemption, the licensee shall, pursuant to 10 CFR 50.12(a)(1), submit a request for exemption which provides a basis for determining that the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. In addition, the request shall demonstrate that special circumstances, as set forth in 10 CFR 50.12(a)(2), are present.

For a typical exercise exemption, two criteria of 10 CFR 50.12(a)(2) are relevant. 10 CFR 50.12(a)(2)(ii) states: "application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule." 10 CFR 50.12(a)(2)(v) states: "the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation."

The underlying purposes for conducting a biennial exercise are to ensure that emergency response organization personnel are familiar with their duties, to test the adequacy of emergency plans, and to identify and correct weaknesses. To accommodate the scheduling of exercises, the NRC has allowed licensees the flexibility to schedule their exercises at any time during the biennial calendar year. This provides a 13 to 35-month window to schedule exercises while still meeting the biennial requirement. A one-time change in the exercise schedule increases the interval between biennial exercises, but, in most cases the postponed exercise still falls within the 35-month window, thus meeting the intent of the regulation.

A licensee request for an exemption should include a list of all drills, exercises, and other training activities conducted since the previous biennial exercise and all drills, exercises, and other training activities scheduled before the next biennial exercise. The list helps establish a basis for assurance that the licensee has regularly exercised its emergency response strategies and personnel in coordination with offsite authorities, that postponing the biennial exercise will not pose an undue risk to public health and safety, and that a good faith effort has been made to satisfy the underlying purpose of the rule.

Exercise Cycle

Rescheduling an exercise within the same calendar year does not require an exemption from regulatory requirements. If the NRC grants an exemption from 10 CFR Part 50, Appendix E, Sections IV.F.2.b and IV.F.2.c, to allow a biennial exercise to be postponed until the following calendar year, the licensee's exercise cycle is not affected. For example, if a licensee is scheduled to conduct its biennial exercise in an even calendar year and receives an exemption to postpone the exercise until the following odd year, future biennial exercises must still be conducted in even calendar years.

Violations of Appendix E to 10 CFR Part 50 and Exemption Time Estimates

If a licensee has not conducted a biennial exercise before the end of the year in which the exercise is scheduled, that licensee may be found in violation of Appendix E to 10 CFR Part 50, Section IV.F.2.b and/or Section IV.F.2.c, unless an exemption has been approved by the NRC. To ensure adequate time for review and approval of an exemption request (approximately 3 months), a licensee should submit the request as soon as possible after identifying the need for an exemption. An exemption can be processed more quickly for exigent circumstances; however, a licensee should not wait until the end of the year if the need is identified well in advance.

BACKFIT DISCUSSION

This RIS provides guidance to licensees on the process for requesting an exemption from the requirements of 10 CFR Part 50, Appendix E, to hold a biennial emergency preparedness exercise. This RIS does not impose new or modified NRC staff requirements or prescribe a particular way to comply with regulations, nor does it require any action or written response. Therefore, this RIS does not constitute a backfit under 10 CFR 50.109, and the NRC staff did not perform a backfit analysis.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment on this RIS was not published in the *Federal Register* because it is informational and pertains to a NRC staff position that does not depart from current regulatory practice.

SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF 1996

The NRC has determined that this action is not subject to the Small Business Regulatory Enforcement Fairness Act of 1996.

PAPERWORK REDUCTION ACT STATEMENTS

The information collections contained in this Regulatory Information Summary guide are covered by the requirements of 10 CFR Part 50, which were approved by the Office of Management and Budget (OMB), approval number 3150-0011.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

CONTACT

Please direct any questions about this matter to the technical contact listed below.

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Note: NRC generic communications may be found on the NRC public website, http://www.nrc.gov, under Electronic Reading Room/Document Collections.

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