

Rulemaking Plan for Revision for
Emergency Preparedness Regulations and Guidance

BACKGROUND:

In SECY-06-0200, the staff provided the Commission with the results of its review of the NRC's emergency preparedness (EP) program and its recommendations regarding proposed enhancements to the EP regulations and guidance. Following the terrorist events of September 11, 2001, the staff concluded that the EP planning basis remains valid but determined that security events differ from other events and that the EP regulations and guidance should be enhanced. In addition, based on a review of the EP program, the staff recommended that other, non-security related enhancements be made to the EP regulations and guidance.

The staff conducted a review of 21 individual EP issues, including several security-related issues that were the subject of Bulletin 2005-02, "Emergency Preparedness and Response Actions for Security-Based Events," dated July 18, 2005. Bulletin 2005-02 requested information from licensees about the integration of security enhancements into emergency response functions at power reactors. The 21 issues were divided into two categories: (1) security-based EP elements and (2) other EP issues. Each issue was evaluated and given a priority of high, medium, or low based on a staff analysis of the relationship to reactor safety, physical security, EP, NRC strategic goals of openness and effectiveness, and stakeholder impact. As part of the EP review, the staff met with internal and external stakeholders, including Federal Emergency Management Agency (FEMA) management, on numerous occasions to discuss the elements of the EP review and plans to pursue the update of EP regulations and guidance.

This rulemaking plan addresses the 12 issues evaluated by the staff to be a high priority. The 12 issues are described in detail in the attached Issue Description Sheets which provide the information typically included in a rulemaking plan. This includes the definition of the regulatory problem, existing regulatory framework, preliminary options considered to resolve the regulatory problem, supporting documents, and potential response from stakeholders. The Commission previously approved the staff's proposal to pursue rulemaking in the SRM to SECY-06-0200. Therefore, no rulemaking options or alternatives are included in this plan.

It is important to note that this rulemaking will have no immediate impact on combined license (COL) applicants or the regulations in 10 CFR Part 52, "Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants." COL applicants must still comply with the emergency preparedness requirements in 10 CFR Part 50.

BACKFIT AND COST EFFECTIVENESS:

The proposed revisions represent a backfit because they contain new requirements that, per § 50.109(a)(1), would constitute, "a modification of or addition to ... the procedures or organization required to design, construct, or operate a facility." As required by § 50.109(a)(4)(ii), staff will prepare a backfit analysis for the proposed rule. Staff expects the security-related proposed changes (Attachments 2, 4, 7, 9, 10, and 11) to satisfy the "adequate protection" exception in § 50.109(a)(4)(ii) because, as discussed in the Issue Description Sheets, these new requirements will ensure that licensees are prepared to respond to security event-based emergencies with adequate protection of public health and safety, both onsite and offsite, and in accordance with the common defense and security. One other proposed revision

(Attachment 3) would redefine what constitutes public protection, thereby satisfying the exception from the backfit analysis requirement in § 50.109(a)(4)(iii). This change includes a clarification of the definition of “decrease in effectiveness” to ensure that licensees can determine when a change to the EP program is a decrease in effectiveness and requires NRC approval prior to implementation. Staff expects to demonstrate with a documented evaluation that each of these changes would constitute an exception to the requirements in § 50.109(a)(2).

The remaining EP issues (Attachments 1, 5, 6, 8, and 12) are new requirements that are believed to be a substantial increase to public health and safety because they will strengthen the ability of licensees to effectively implement emergency plans. The staff expects that each of these actions will result in increased costs to the licensees, ranging from minimal costs for updates to procedures or programs, to potentially significant costs such as new backup systems to licensee alert and notification systems. However, the staff’s preliminary analysis indicates that these changes will be cost-justified, thereby meeting the criteria of the backfit rule and cost-effective.

OGC ANALYSIS:

The Office of the General Counsel has reviewed the rulemaking plan proposing to amend NRC emergency preparedness regulations and guidance to include security-based EP elements and improve and clarify certain safety-related EP requirements. The Commission approved this undertaking in SRM-SECY-06-0200, ordering “the development of a rulemaking plan and guidance changes to enhance the Emergency Preparedness (EP) regulations and guidance.”

Each of the proposed changes to the regulations and guidance constitutes a backfit as defined in 10 CFR 50.109(a)(1), thereby requiring staff to conduct a backfit analysis for the proposed rule. Certain of the proposed changes may satisfy an exception to the backfit rule. The proposed rule will also require preparation of an environmental assessment, as it appears that there are no categorical exclusions in 10 CFR 51.22(c) that would apply to this rulemaking.

The determination of whether the rule is a “major rule” under the Congressional Review Act will be made during the development of the Regulatory Analysis prepared for the proposed rule. If the rule is not a major rule, then the mandated 60-day period prior to effectiveness of major rules is not applicable.

The proposed rule will require licensees to generate and maintain records related to their EP operations. Accordingly, the rule will require OMB review and approval for the purpose of the Paperwork Reduction Act.

OGC has concluded that there are no known bases for legal objection to the contemplated rulemaking.

AGREEMENT STATE IMPACT:

This rulemaking would not apply to facilities or licensees regulated by Agreement States.

MAJOR RULE

The determination of whether the proposed rule is a “major rule” under the Small Business Regulatory Enforcement Fairness Act (SBREFA) will be made during the development of the regulatory analysis for the proposed rule. The staff believes that the costs of implementation of

this rule would not result in any costs to NRC or Agreement State licensees sufficient to make this a major rule. Much of what is proposed codifies existing practice or makes necessary enhancements to current licensee practices. Changes that could increase licensees' burden are changes to emergency plans and related procedures and are expected to have one-time implementation costs for these changes as well as some ongoing costs for training of personnel and conducting reviews. Additionally, there may be costs associated with new components for changes such as ensuring that there is a backup for the alert and notification system.

LIST OF SUPPORTING DOCUMENTS:

The staff will evaluate the 12 issues to be incorporated in the rule and will determine the regulations that will be affected, as well as the associated guidance. As the rule is being developed, the staff intends to revise or develop the necessary guidance that will be needed for stakeholder implementation. The staff expects that the rule may become final before completion of all the revised guidance. Therefore, it may be appropriate for the rule to become effective when the guidance is completed as denoted by issuance of a *Federal Register* notice describing the revised guidance and effective date. The staff considers this approach acceptable because licensees will need time to implement some of the rule changes and because this approach will allow the guidance to reflect the final rule requirements.

The following regulations are expected to be affected by this rulemaking:

- 10 CFR Part 50.2, Definitions
- 10 CFR Part 50.8, Information collection requirements: OMB approval
- 10 CFR Part 50.47, Emergency plans
- 10 CFR Part 50.54, Conditions of licenses
- 10 CFR Part 50.72, Immediate notification requirements for operating nuclear power reactors
- 10 CFR Part 50, Appendix E, Emergency Planning and Preparedness for Production and Utilization Facilities

Requirements from the following orders will be incorporated in this rulemaking:

- EA-02-026 "Interim Compensatory Measures (ICM) Order," dated February 25, 2002

The following guidance documents are affected by this rulemaking and will be revised or withdrawn in parallel with the rulemaking effort:

- NUREG/CR-6863, "Development of Evacuation Time Estimate Studies for Nuclear Power Plants"
- NUREG-0696, "Functional Criteria for Emergency Response Facilities"
- NUREG-0737, Supplement 1, "Clarification of TMI Action Plan Requirements"
- NUREG-0654/FEMA-REP-1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants"

- EPPOS-2, “Emergency Preparedness Position on Timeliness of Classification of Emergency Conditions”
- RG 1.101, “Emergency Preparedness and Planning for Nuclear Power Plants”

RESOURCES:

The staff resources needed to support the planned activities are:

Office	FY 2007 FTE	FY 2007 \$	FY 2008 FTE	FY 2008 \$	FY 2009 FTE	FY 2009 \$
NSIR	1.5	\$0	2.5	\$200K	1.5	\$250K
NRR	1.2	\$0	1.2	\$25K	1.2	\$25K
NRO	0.1	\$0	0.3	\$0	0.5	\$0
OGC	0.3	\$0	0.4	\$0	0.4	\$0

Resources for FY 2007 and FY 2008 reflect current budgeted resources. FY 2009 resources are being addressed through the agency Planning, Budget, and Performance Management (PBPM) process.

RECOMMENDATION FOR ISSUANCE BY COMMISSION:

Because the recommended actions are the first comprehensive enhancements to EP in many years and there may be significant public interest in the rulemaking effort, it is recommended that the Commission issue both the proposed and final rule.

WORKING GROUP:

The staff has determined that a staff level working group will be formed, but a steering group is not needed for this rule.

Office	Staff	Concurring Official
NSIR	Kathryn Brock Falk Kantor Steve LaVie Edward Roach Randy Sullivan Don Tailleart	Roy Zimmerman
NRR	Joe Birmingham	Jim Dyer
OGC	Howard Benowitz	Francis Cameron
ADM	Betty Golden	Mike Lesar
NRO	Nanette Gilles	Jim Lyons

STAKEHOLDER INTERACTION:

Draft rulemaking documents will be placed on RuleForum to enhance public dialogue and to allow early information of NRC's rule changes that may impact new reactor applicants. When the proposed rule is published in the *Federal Register*, it will be placed on RuleForum for review and comment. The rulemaking plan as well as other information including the proposed rule and associated draft guidance documents will all be placed on RuleForum.

The staff has also engaged FEMA and formed a working group to discuss issues of mutual interest to NRC and FEMA. The staff intends to hold 2-4 public meetings in different locations throughout the country shortly after the proposed rule is published in the *Federal Register*. This will enable staff to engage stakeholders in a more personal setting and answer questions regarding the proposed rule. The staff will develop a Communication Plan to support these public meetings.

COORDINATION:

The Office of the General Counsel has reviewed this package and has no legal objection. The Office of the Chief Financial Officer (OCFO) reviewed the resources in SECY-06-0200 for resource implications and had no objections.

SCHEDULE:

Action	Date
Completion of technical basis document	October 2007
Begin contract for Regulatory Analysis	October 2007
Implement outreach program with stakeholders	November 2008
Proposed rule to the Commission	November 2008
Proposed Rule published in <i>Federal Register</i> with 75-day comment period	February 2009
Resolution of public comments	July 2009
Final Rule to the Commission	November 2009
Publication of Final Rule	March 2010
Publication of guidance documents	September 2010