

Concerns of Some Members of the Staff Regarding Proposed Emergency Preparedness Rulemaking

- 1) The primary concern of some members of the staff on the proposed emergency preparedness rulemaking relates to the planned change in regulatory process for licensee submittal of emergency plan (EP) and emergency action level (EAL) changes that require prior NRC approval pursuant to 10 CFR 50.54(q) and Section IV.B of Appendix E to 10 CFR Part 50.
- 2) Currently, EP and EAL changes that require prior NRC approval are submitted to the NRC in accordance with 10 CFR 50.4 (i.e., as a report). The NRC staff issues the approvals/denials via letter with an attached safety evaluation.
- 3) The proposed rulemaking would change the submittal process for EP changes and some EAL changes to use the license amendment process (i.e., pursuant to 10 CFR 50.90). The major difference is that the license amendment process provides opportunities for public comment and to request a hearing.
- 4) The Office of the General Counsel has advised the staff that the license amendment process (with its associated hearing rights) needs to be used for EP or EAL changes that would reduce the effectiveness of the approved emergency plan. A reduction in effectiveness is the criteria in 10 CFR 50.54(q) that a licensee uses to determine if prior NRC approval is needed.
- 5) Several staff members have tried to get clarification on the legal basis for the proposed change to use the license amendment process. However, it is the view of these staff members that this basis has not been provided. The current process (letter with safety evaluation) has been in place since promulgation of 10 CFR 50.54(q) in 1980.
- 6) The current rulemaking package provides very little discussion on the change in process and gives no reason why certain EAL changes would use the amendment process and others would not.
- 7) In the NRC staff's plan for the proposed rulemaking, as discussed in SECY-06-0200, the staff stated that one of the problems with the current requirements in 10 CFR 50.54(q) is that the lack of clarity "has led to varied implementation by licensees, several enforcement actions, and unnecessary and precautionary submittals for NRC review resulting in inefficient and ineffective use of licensee and staff resources." The proposed rulemaking does not add clarity to the regulatory process associated with 10 CFR 50.54(q). In fact, the current wording seems to add further confusion to this regulatory process.
- 8) Consistent with 10 CFR 1.43, NRR has principal responsibility for developing, promulgating, and implementing the regulations under 10 CFR Part 50, and developing policies, programs, and procedures for all aspects of licensing (including emergency preparedness). It is important that NRR and its stakeholders have a clear understanding of the basis for the proposed use of the license amendment process for EP and EAL changes. As such, the basis for the legal position should be documented consistent with the requirements in NRC Management Directive (MD) 3.53, Handbook Part I, "Recordkeeping Requirements." Specifically, MD 3.53 requires that in order to provide

adequate documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the NRC, Federal Records shall be created and maintained that are sufficient to document the formulation and execution of basic policies and decisions and necessary actions taken, including all significant decisions and commitments reached orally (person to person, by telecommunications, or in conference).

- 9) Based on these concerns, staff members have developed a request for legal interpretation. The request is currently in the concurrence process.