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**COMMENTS BY JOHN G. LAMB ON**  
**DRAFT REGULATORY ISSUE SUMMARY 2005-02, REVISION 1,**  
**“CLARIFYING THE PROCESS FOR MAKING EMERGENCY PLAN CHANGES”**  
**DOCKET ID NRC-2009-0365**

The proposed Regulatory Issue Summary (RIS) 2005-02, Revision 1, “Clarifying the Process for Making Emergency Plan Changes,” should not be issued for the following reasons: (1) the proposed RIS is inconsistent with prior U.S. Nuclear Regulatory Commission (NRC) Commission direction, (2) the proposed RIS is an inappropriate use of a RIS to change NRC staff position, and (3) the proposed RIS pre-determines the end result of a current Emergency Plan (EP) rulemaking.

The proposed RIS is inconsistent with prior direction from the NRC Commission in the Staff Requirements Memo (SRM) for SECY-08-0024. The NRC staff (in SECY-08-0024, dated February 25, 2008, ADAMS Accession No. ML072900547) requested that the Commission delegate to the staff the authority to approve or deny proposed emergency plan changes that licensees submit based on their finding that the change represents a decrease in effectiveness. The staff stated that it should have this authority consistent with Office of Nuclear Reactor Regulation’s (NRR’s) authority to approve or deny other routine licensing actions such as license amendments, relief requests, etc. The SECY also stated that the staff intended to pursue a change to Title 10 of the *Code of Federal Regulations* (10 CFR) 50.54(q), through the planned rulemaking, to require that decrease in effectiveness changes be submitted pursuant to 10 CFR 50.90. The Commission (in the SRM for SECY-08-0024 dated May 19, 2008, ADAMS Accession No. ML081400510) approved the staff’s recommendation that it be delegated the authority to approve or deny proposed emergency plan changes that represent a decrease in effectiveness. This approval included the condition that these changes are signed out by the NRR Office Director (or designated Acting Director). However, the approval from the Commission was not conditioned based on use of the license amendment process.

Requiring licensees to submit proposed emergency plan changes as license amendment requests, prior to rulemaking, is clearly a change in NRC staff position. As such, the proposed action is an inappropriate use of a RIS.

In the SRM for SECY-09-0007, dated April 16, 2009 (ADAMS Accession No. ML091060206), the Commission approved, with comments, the staff’s recommendation to publish a proposed rule to amend certain emergency preparedness requirements in 10 CFR Part 50. As discussed in SECY-09-0007 (ADAMS Accession No. ML082890481), the proposed rulemaking would revise 10 CFR 50.54(q) and Section IV.B of Appendix E to 10 CFR Part 50 to require that EP and emergency action level changes which reduce the effectiveness of the approved EP be submitted as license amendment requests pursuant to 10 CFR 50.90 (i.e., same changes proposed in the draft RIS). Use of the RIS to change the regulatory process prior to completion of the rulemaking proposed in SECY-09-0007 essentially pre-determines the end result of the rulemaking process rather than allowing stakeholder input to help mold the direction of the proposed rule change. It is inappropriate for the NRC staff to take action which would predetermine the outcome of a proposed rulemaking initiative.

Date: 09/09/09