

POLICY ISSUE NOTATION VOTE

July 25, 2013

SECY-13-0079

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

SUBJECT: REQUEST TO CHANGE APPROVAL AUTHORITY
FOR EMERGENCY PLAN CHANGES

PURPOSE:

To request Commission approval to change the approval authority for emergency plan (EP) changes which result in a decrease in effectiveness from the Director of the Office of Nuclear Reactor Regulation (NRR), to the Branch Chief level of NRR, in consultation with the Office of Nuclear Security and Incident Response (NSIR). This paper does not address any new commitments or resource implications.

BACKGROUND:

In SECY-06-0200, "Results of the Review of Emergency Preparedness Regulations and Guidance," dated September 20, 2006 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML061910707), the staff provided to the Commission the results of a review of the emergency preparedness regulations and associated guidance, and the staff requested Commission approval for the development of a rulemaking plan and associated guidance. In SECY-06-0200, the staff also discussed Title 10 of the Code of Federal Regulations (10 CFR), Section 50.54(q) and the requirements within this section regarding EP changes that constitute a decrease in effectiveness¹. In that SECY paper, the staff requested

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¹ Per the Nuclear Regulatory Commission (NRC) Regulatory Issue Summary 2005-02, Revision 1, "Clarifying the Process for Making Emergency Plan Changes," a decrease in effectiveness is defined as a change in an emergency plan that results in reducing the licensee's capability to perform an emergency planning function in the event of a radiological emergency. In 2011, the NRC revised the requirements in 10 CFR 50.54(q) and changed the concept of a "decrease" in effectiveness to a "reduction" in effectiveness. For the purposes of this paper (i.e., change in approval authority), the staff views these requirements as equivalent.

that the Commission delegate to the staff the ability to approve emergency plan changes that represent a decrease in effectiveness.

In SRM-SECY-06-0200, dated January 8, 2007 (ADAMS Accession No. ML070080411), the Commission approved “the staff’s recommendation for the development of a rulemaking plan and guidance changes to enhance the emergency preparedness regulations and guidance,” as well as “the proposal to clarify regulatory requirements regarding changes to emergency plans.” However, the Commission disapproved the staff’s request to delegate the authority to staff to approve EP changes that represent a decrease in effectiveness. The staff was directed to resubmit a proposal to the Commission with a documented basis for the proposed action and recommended language to be incorporated in an appropriate management directive (MD) that would authorize such delegation. The Commission also directed the staff to provide the extent of efficiencies that could be gained by delegating such authority and stakeholder perspectives.

On February 25, 2008, the staff submitted SECY-08-0024, “Delegation of Commission Authority to Staff to Approve or Deny Emergency Plan Changes that Represent a Decrease in Effectiveness” (ADAMS Accession No. ML072900547). In reviewing the background of licensee EP change requests following the issuance of the SRM for SECY-06-0200, the staff concluded that it had the authority to review and approve all EP changes, including those that represent a decrease in effectiveness, with one exception. The exception, described in SRM-SECY-96-0170, dated September 18, 1996, requires Commission approval for relocation of an emergency operations facility if it is located more than 25 miles from the nuclear power plant site. The staff is not proposing to change this direction. In SRM-SECY-08-0024, dated May 19, 2008 (ADAMS Accession No. ML081400510), the Commission provided the following direction on the authority to approve EP changes that represent a decrease in effectiveness:

This authority is delegated not lower than the Director (or Deputy Office Director when acting for the Office Director) of the Office of Nuclear Reactor Regulation (NRR), in consultation with the Office of Nuclear Security and Incident Response.

The staff issued the final rule regarding enhancements to emergency preparedness regulations in the *Federal Register* (76 FR 72560; November 23, 2011). The final rule, “Enhancements to Emergency Preparedness Regulations,” codified certain voluntary protective measures contained in NRC Bulletin 2005-02, “Emergency Preparedness and Response Actions for Security-Based Events,” dated July 18, 2005 (ADAMS Accession No. ML051740058). The final rule also codified the generically applicable requirements, similar to those that the Commission previously imposed through orders. In addition, the final rule amended other emergency preparedness requirements, based on a comprehensive review of the NRC’s regulations and guidance. The requirements include: (1) enhance a licensee’s ability to prepare and take certain actions and protective measures in the event of a radiological emergency, (2) address, in part, security-related emergency preparedness issues identified after the terrorist events of September 11, 2001, (3) clarify regulations to effect consistent implementation among licensees, and (4) modify certain requirements to be more effective and efficient. The codification of several requirements previously captured through various regulatory tools, such as orders and generic communications, has provided greater clarity, and ensured staff has available a systematic process for reviewing and approving changes in emergency plans.

As part of the final rule, staff ensured that the NRC will review, prior to implementation, any change that reduces the effectiveness of the EP. This review will occur through a license

amendment request in accordance with 10 CFR 50.90 and 10 CFR 50.91. As a result, the staff now reviews such EP changes in a manner similar to all other licensing amendments.

DISCUSSION:

In 2011, the NRC modified the emergency preparedness requirements. This included modifications to 10 CFR 50.54(q)(4), which now states, in part:

The changes to a licensee's emergency plan that reduce the effectiveness of the plan as defined in paragraph (q)(1)(iv) of this section may not be implemented without prior approval by the NRC. A licensee desiring to make such a change after February 21, 2012, shall submit an application for an amendment to its license. In addition to the filing requirements of §§ 50.90 and 50.91, the request must include all emergency plan pages affected by that change and must be accompanied by a forwarding letter identifying the change, the reason for the change, and the basis for concluding that the licensee's emergency plan, as revised, will continue to meet the requirements in appendix E to this part and, for nuclear power reactor licensees, the planning standards of § 50.47(b).

These requirements provide for NRC review and approval prior to any changes reducing the effectiveness of the EP. The staff notes that any proposed changes that reduce the effectiveness of the EP still need to meet the NRC's fundamental requirements for Emergency Preparedness and Planning of Appendix E and 10 CFR 50.47(b). As such, compliance with NRC's emergency preparedness standards is assured both prior to any EP changes, and following approval of any changes.

Over the past several years, the staff has gained considerable experience in implementing the Commission's direction and the revised final rule. These reviews have become routine, and the proposed changes have typically been minor and appropriate. The staff notes that having the Director of NRR and other senior management involved in approving EP changes associated with a reduction in effectiveness significantly differs from the processes and controls the NRC employs for approval of other comparable licensing actions. The staff does not believe the potential safety implications of EP changes are any greater than those associated with other licensing actions, or that there is any reason to require a higher level of approval for EP changes than changes to other safety requirements.

The staff notes that SECY-08-0024 and the resulting SRM-SECY-08-0024 were developed before the publication of the emergency preparedness rulemaking (SECY-11-0053, "Enhancements to Emergency Preparedness Regulations"), which codified the requirements that any EP changes that reduce the effectiveness must be submitted to the NRC through the license amendment process. The staff recognizes the considerable stakeholder interest in licensee emergency plans, especially those that might represent a decrease in effectiveness. The license amendment process affords all stakeholders an opportunity to provide comments and request a hearing. Because of the direction in the SRM, EP license amendments which result in a decrease in effectiveness must be approved by an authority no lower than the Director (or Deputy Office Director when acting for the Office Director) of NRR, in consultation with NSIR. This introduces additional layers of management review and approval, which is inconsistent with how staff approves other similar license amendments. The engagement of senior management in EP license amendments associated with a reduction in effectiveness

departs from the typical alignment of roles and responsibilities of staff, line management, and senior management. This also results in delays in the issuance of EP license amendments. The staff believes that processing EP changes as an exception to the NRC's normal processes for licensing amendments decreases efficiency and results in a burden on staff resources, without a commensurate increase in public health and safety.

RECOMMENDATIONS:

The staff recommends that the Commission approve a change in the approval authority for EP license amendments which result in a decrease in effectiveness, other than relocation of an emergency operations facility 25 miles or more from the nuclear power plant site, to the NRR Branch Chief level. This change in authority would be consistent with the level of authority required for routine license amendments. NRR would continue to consult with NSIR on EP license amendments prior to their issuance.

COORDINATION:

The Office of the General Counsel has reviewed the paper and has no legal objections. The Office of the Chief Financial Officer has reviewed the paper for resource implications and has determined that concurrence is not needed since the resource implications are less than one full-time equivalent.

/RA Michael R. Johnson for/

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ADAMS Accession No.: ML12312A420

*via email

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