

November 6, 2001

COMMISSION VOTING RECORD

DECISION ITEM:      SECY-01-0192

TITLE:                      RULEMAKING PLAN: REVISION OF APPENDIX E TO  
                                    10 CFR PART 50

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of November 6, 2001.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

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Annette L. Vietti-Cook  
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc:      Chairman Meserve  
         Commissioner Dicus  
         Commissioner Diaz  
         Commissioner McGaffigan  
         Commissioner Merrifield  
         OGC  
         EDO  
         PDR

## VOTING SUMMARY - SECY-01-0192

### RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	PARTICIP	NOT COMMENTS	DATE
CHRM. MESERVE	X					X 11/2/01
COMR. DICUS	X					X 10/30/01
COMR. DIAZ	X					X 10/29/01
COMR. McGAFFIGAN	X					10/29/01
COMR. MERRIFIELD	X					X 10/25/01

### COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and some provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on November 6, 2001.

## Commissioner Comments on SECY-01-0192

### Chairman Meserve

I approve the staff's proposal for a rulemaking to clarify and reconcile the requirements in 10 CFR 50 Appendix E and 10 CFR 50.54(q), so as to allow licensees to make minor changes in emergency action levels (EALs) without prior NRC approval.

I also approve the staff's recommendation that enforcement discretion be exercised on apparent violations of Appendix E requirements prior to completion of the rulemaking.

I concur with the comments of my colleagues regarding the apparent unduly long time and level of effort estimated by the staff for completion of this rulemaking. I urge the staff to take appropriate measures to expedite the rulemaking and to reduce the resources committed to it.

### Commissioner Dicus

I approve the Staff's proposal. Removing potential ambiguities in current regulations, in the manner proposed by the Staff illustrates Staff's commitment to reduce unnecessary regulatory burden. Since changes to Emergency Action Levels that may reduce the effectiveness of the emergency plans require prior NRC approval, I agree with the Staff that the proposed change does not increase risk to the public.

Notwithstanding the above, I have one comment. The SECY states that approximately 2.0 FTE of staff resources is anticipated to be expended for this rulemaking during the time frame from FY 2001 through FY 2004. The amount of resources and the schedule appear to be disproportionate to the magnitude of the proposed rule change. Therefore, the Staff should examine ways to reduce resources expended, and expedite the schedule.

### Commissioner Diaz

I approve the staff's recommendations to proceed with the rulemaking plan for Part 50, Appendix E, using Option 2 to delete the need for NRC to approve changes to Emergency Action Levels (EALs) that do not diminish the effectiveness of the emergency plans (§50.54(q) criteria) or constitute a new EAL scheme. This would clarify the treatment of changes to EALs by addressing the apparent ambiguity between 50.54(q) and Appendix E requirements. Licensees could revise their EALs without prior NRC approval unless the revision implemented a new EAL scheme or decreased the effectiveness of the emergency plan.

I note that 10 CFR 50, Appendix E states that "emergency action levels shall be discussed and agreed on by the applicant and State and local governmental authorities and approved by the NRC" but it does not specifically address "changes" to EALs. As the staff noted, EALs are contained in licensees' emergency plans and emergency plan implementing procedures. Section §50.54(q) specifically address changes and states that licensees can make changes to their emergency plans without Commission approval "only if the changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of §50.47(b) and the requirements of Appendix E to 10 CFR Part 50." There has been some

difference of opinion on the treatment of changes to EALs and the staff stated that “the regulations are best interpreted to require prior NRC approval for all changes to a licensee’s EALs.” I do not necessarily agree that this is the “best” interpretation, however, I agree with this rulemaking plan because resolution of this ambiguity is clearly beneficial.

The staff also stated that the OE staff recommends exercising enforcement discretion regarding violations of 10 CFR Part 50, Appendix E, until the rule is finalized, and I agree due to a perceived lack of clarity in the current regulations.

Finally, the staff estimated that 2.0 FTE would be expended for this rulemaking in the time frame of FY 2001 through FY 2004. Both the FTE and the time frame for conducting this rule change appear excessive.

#### Commissioner Merrifield

I approve the staff’s recommendation to proceed with rulemaking to revise Appendix E to 10 CFR Part 50 as described in Option 2 of the rulemaking plan.

I fully support the staff’s plan to inform the Federal Emergency Management Agency, as well as State, Tribal Nation, and local government organizations within the plume exposure emergency planning zone, when the proposed rule is issued for public comment. It is imperative that we actively solicit their views on this matter.

The staff should reassess its resource estimates as they seem high given the nature of this rulemaking.