

April 16, 2009

MEMORANDUM TO: R. W. Borchardt  
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS – SECY-09-0007 – PROPOSED RULE  
RELATED TO ENHANCEMENTS TO EMERGENCY  
PREPAREDNESS REGULATIONS (10 CFR PART 50) (RIN  
3150-A110)

The Commission has approved the staff's recommendation to publish, for a 75-day public comment period, the proposed rule to amend certain emergency preparedness requirements in 10 CFR Part 50 that govern domestic licensing of production and utilization facilities, subject to the comments and changes noted below.

1. Appendix E, Section IV should be revised to more clearly articulate the licensees' responsibility for monitoring population changes and how the licensee should use Evacuation Time Estimate (ETE) information (such as influencing their protective action recommendations to the appropriate authorities).
2. Appendix E, Section IV.D.3. should be clarified to differentiate between the terms "alerting," "warning," and "notification." The staff should also ensure that the new requirement clearly applies to both the ALERTING function and the NOTIFICATION function of the Federal Emergency Management Agency (FEMA) approved Alert and Notification System (ANS).
3. Appendix E, Section I should be clarified to ensure that the scope of the term "personnel" in the proposed rule, as well as the statements of consideration, are consistent with Bulletin 2005-02, "Emergency Preparedness and Response Actions for Security-Based Events," to ensure the continued ability of the licensee to safely shutdown the reactor and perform the functions of the onsite emergency plan.
4. Appendix E, Section IV.E.8.b. should be revised to more specifically document the minimum functional requirements of the near-site facility that is maintained for sites that establish consolidated, (not near-site) Emergency Operating Facilities (EOF). These functional requirements must address the capability of the near-site facility to accommodate the mission needs and interests of an NRC site team, as well as other federal, State, and local responders.
5. The options for EOF locations should be available to all licensees, as long as the EOF and the near-site facility meet the functional requirements associated with consolidated EOFs.

6. The proposed revision to 10 CFR 50.54(q) clarifies the requirements for licensees wanting to make changes to their emergency plans. The staff should add more detail to the statements of consideration that explain why this clarification is necessary.
7. Appendix E, Section IV.F. should be revised to ensure that the exercise planning cycle is defined in the regulations, and that the regulations identify the major emergency response functions that are to be demonstrated during the course of a planning cycle, as well as for each biennial exercise required in 10 CFR 50 Appendix E.IV.F.2. The specific details of these major functions should be included in guidance.
8. Appendix E, Section IV.C. should be changed to remove the implied requirement that, for certain situations, (such as instances involving time dependent Emergency Action Levels (EALs)) the licensee must declare an emergency event before the associated EAL condition is met. In NRC guidance for this rule change, the staff should explicitly state that if an EAL will be met imminently and cannot be avoided, the NRC would not consider it to be a violation of their emergency plan to declare the event before the EAL is met, and that it would be beneficial to public health and safety to do so (but not required by the regulations).
9. It is appropriate to require the licensee to declare the emergency event, based on the approved EAL scheme, promptly, meaning as soon as possible following a determination that an EAL condition is met, AND also that the declaration should be made within 15 minutes of event conditions being available to the decision maker. These are two distinct new requirements, and they must be clearly differentiated in the proposed rule.
10. The staff should ensure that the language in the rule, or in the associated statements of consideration, clearly characterize the new definitions of “emergency planning function” and “decrease in effectiveness,” and how they relate to the EP regulations, as well as the conditions that would require NRC pre-approval for Emergency Plan and EAL changes to ensure the goal of increased regulatory efficiency and effectiveness is achieved, without heavy reliance on associated NRC guidance documents.
11. Appendix E, Section IV.C.2. should be revised as follows to assure consistent terminology is used. On page 105, paragraph 2., revise line 8 to read ‘ ... necessary to protect **public** health and safety provided that any delay in ~~classification~~ **declaration** does not deny ....’ Additionally, the statements of consideration should be revised to avoid confusing the use of “classification” and “declaration.”
12. Appendix E, Section IV.D.3. should be revised, along with the supporting SOC, to clarify the terms “unavailable” and “unavailability”, to provide conditions under which the backup method needs to be capable of operating, and to better define the capabilities of the required backup method.
13. Appendix E, Section IV.E.8.d. should be revised to more accurately reflect the proposed capabilities of the specified facilities, consistent with the capabilities described in the statements of consideration, for use during a hostile action event.

14. Changes to the *Federal Register* notice

- a. On page 11, 1<sup>st</sup> full paragraph, revise line 3 to read '... tasks. The ~~current~~ requirements ....' Revise lines 4 and 5 to read '... Section IV.A. **Currently,** ~~These regulations do not~~ **specifically require** ~~state~~ that ....'
- b. On page 15, paragraph 1, revise line 5 to read '... response. However, ~~current~~ NRC regulations ....'
- c. On page 16, last paragraph, revise line 1 to read '**Currently,** Licensees are ~~required by current~~ § 50.47(b)(8) and Part 50, Appendix E, Section IV.E. **require licensees** ....'
- d. On page 17, 1<sup>st</sup> full paragraph, revise line 1 to read '... the ~~current~~ regulations at ....' This correction should be made throughout the document.
- e. On page 20, last paragraph, revise line 1 to read '~~Existing~~ NRC regulations ....'
- f. On page 22, paragraph 3, revise line 4 to read '... scenarios. The ~~current~~ NRC regulations **addressing this issue** are general ....'
- g. On page 23, last paragraph, revise line 8 to read '... of an order **or a regulation.**'
- h. On page 25, 1<sup>st</sup> full paragraph, revise line 3 to read '... FEMA regulations ~~and guidance~~ that ....' Revise line 4 to read '... exercise scenarios **and guidance to assist effective implementation of these regulations.** The ....'
- i. On page 26, 4<sup>th</sup> full paragraph, revise line 1 to read 'The ~~current~~ regulations ....' Revise line 4 to read '... objectives. ~~Existing~~ NRC regulations do not **currently** require ....'
- j. On page 30, revise line 1 from the top to read '... functions. Three **alternatives variations** for ....'
- k. On page 30, 1<sup>st</sup> full paragraph, revise line 1 to read '... first **alternative variation** would ....'
- l. On page 30, 2<sup>nd</sup> full paragraph, revise line 1 to read '... second **alternative variation** would ....'
- m. On page 31, 1<sup>st</sup> full paragraph, revise line 1 to read '... third **alternative variation** was ....'
- n. On page 31, last paragraph, revise lines 1 and 2 to read '... NRC has ~~occasionally observed~~ **a few licensees whose responses** ~~a lack of urgency by a few licensees in performing emergency classifications~~ **were inappropriately delayed.**'
- o. On page 33, last paragraph, revise line 12 to read '... licensees are **aware that they are responsible for** ~~able to complete~~ing ....'

- p. On page 35, 1<sup>st</sup> full paragraph, revise line 1 to read ‘ ... neither ~~current~~ regulations ....’
  - q. On page 44, paragraph 1, revise line 7 to read ‘ ... to amend ~~current~~ ....’
  - r. On page 44, paragraph 2, revise line 1 to read ‘ ... Currently § ....’
  - s. On page 49, last paragraph, revise line 1 to read ‘ ... comment letters **that** **focused** on the ....’
  - t. On page 64, delete the blank line near the bottom of the page.
  - u. On page 110, footnote 6, revise line 1 to read ‘ ... participation when ~~we~~ used ....’
- 15. In the Regulatory Analysis, correct the formatting in the bullets on pages 5, 7, and 41.
  - 16. In the Summary and Analysis of Public Comments, page 8, 4<sup>th</sup> full paragraph, line 3, correct the placement of the hyphen in “99-02.”
  - 17. In the Summary and Analysis of Public Comments, page 13, 7<sup>th</sup> full paragraph, revise line 1 to read ‘ ... exercises ....’

cc: Chairman Klein  
Commissioner Jaczko  
Commissioner Lyons  
Commissioner Svinicki  
OGC  
CFO  
OCA  
OPA  
Office Directors, Regions, ACRS, ASLBP (via E-Mail)  
PDR