

POLICY ISSUE
(NOTATION VOTE)

February 25, 2008

SECY-08-0024

FOR: The Commissioners
FROM: Luis A. Reyes
Executive Director for Operations

SUBJECT: DELEGATION OF COMMISSION AUTHORITY TO STAFF TO
APPROVE OR DENY EMERGENCY PLAN CHANGES THAT
REPRESENT A DECREASE IN EFFECTIVENESS

PURPOSE:

This paper requests that the Commission delegate to the staff the authority to approve or deny proposed emergency plan changes that would represent decreases in the effectiveness of a licensee's emergency plan. While these changes may represent a reduction in effectiveness, the emergency plan would still meet the requirements of 10 CFR 50.47(b) and Appendix E to 10 CFR 50. A reduction below these requirements would require an exemption from the regulations.

BACKGROUND:

This paper responds to the Staff Requirements Memorandum (SRM) for SECY-06-0200, "Results of the Review of Emergency Preparedness Regulations and Guidance," dated January 8, 2007 (ADAMS Accession No. ML070080411). It addresses the issue of staff authority to approve or deny proposed emergency plan changes affecting power reactors, research reactors, and fuel facilities licensed under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50 that represent a decrease in effectiveness.

CONTACTS: Don Tailleart, NSIR/DPR
(301) 415-2966

Kathryn Brock, NSIR/DPR
(301) 415-2015

In SECY-06-0200 dated September 20, 2006 (ADAMS Accession No. ML061910707), the staff recommended several enhancements to the existing emergency preparedness (EP) regulations and guidance. As part of these enhancements, the staff included the following statement in SECY-06-0200: "In addition, to increase efficiency, the staff proposes that the Commission delegate to the staff the ability to approve emergency plan changes that represent a decrease in effectiveness."

In the SRM for SECY-06-0200, the Commission approved "the staff's recommendation for the development of a rulemaking plan and guidance changes to enhance the EP 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 be delegated the authority to approve emergency plan 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 staff was also directed to provide the extent of efficiencies that could be gained and stakeholder perspectives.

In reviewing the background of licensee emergency plan change requests following issuance of the SRM for SECY-06-0200, the staff concluded that the Office of Nuclear Reactor Regulation (NRR) had the authority for review and approval of all emergency plan changes, including those that decrease effectiveness, with one exception¹. This view was a change from the staff's position that led to the request made in SECY-06-0200. However, the SRM for SECY-06-0200 made it clear that the staff no longer had that authority. This paper provides the Commission with the information sufficient to return this authority to the staff.

DISCUSSION:

Documented Basis for the Delegation

Delegation of Commission authority to the staff is addressed in several regulations and MDs, including the following:

- 10 CFR 50.2, "Definitions," states that "*Commission* means the Nuclear Regulatory Commission or its duly authorized representatives." This means that the Commission can delegate specific responsibilities to the staff.
- 10 CFR 1.43, "Office of Nuclear Reactor Regulation," states, in part, that "[T]he Office of Nuclear Reactor Regulation – (a) Develops, promulgates and implements regulations and develops and implements policies, programs, and procedures for all aspects of licensing, inspection and safeguarding of – ... (4) Emergency preparedness at such facilities..."
- MD 9.27, "Organization and Functions – Office of Nuclear Reactor Regulation," paragraph 0123-02, states, in part, that NRR has the principal responsibility for implementing regulations, and developing and implementing policies, programs, and procedures for all aspects of licensing and inspection, including EP at facilities licensed

¹ Per the SRM for SECY-96-0170, dated September 18, 1996, Commission approval is required for relocation of an emergency operations facility if it is located more than 25 miles from the nuclear power plant site.

under 10 CFR Part 50. MD 9.27, paragraph 0123-022, further states, in part, that NRR is responsible for developing the overall Nuclear Regulatory Commission (NRC) evaluation of reactor licensee/applicant onsite/offsite emergency plans.

NRC requirements pertaining to emergency plan changes by 10 CFR Part 50 licensees are addressed in 10 CFR 50.54(q). A change can be made to an emergency plan by a 10 CFR Part 50 licensee without prior Commission approval as long as the plan's effectiveness is not decreased and the plan, as changed, continues to meet the requirements of 10 CFR 50.47(b) (for power reactors) and Appendix E to 10 CFR Part 50 (for power reactors, research reactors, and fuel facilities). Section 10 CFR 50.54(q) does not specify what types of changes are considered decreases in effectiveness and must be submitted to the Commission for review and approval prior to implementation. The regulation requires a licensee to assess whether proposed changes to emergency plan requirements result in a "decrease in effectiveness" of the emergency plan. Using the emergency planning standards in 10 CFR 50.47(b), licensees assess the effectiveness of an emergency plan by evaluating the capability of the licensee to perform various EP functions in a timely and accurate manner, such as classification of emergencies, notification of offsite agencies, development of appropriate protective action recommendations, augmentation of the emergency response organization, activation of emergency response facilities, and effective mitigation of a plant event. Proposed emergency plan changes that adversely impact the capability to perform EP functions could result in a "decrease in effectiveness" conclusion and require Commission approval prior to implementation.

Consistent with the requirements in 10 CFR 1.43 and MD 9.27, regarding NRR having the responsibility for implementing the procedures for all aspects of licensing of production and utilization facilities, the NRR staff is authorized to approve or deny significant licensing or regulatory actions including construction permits, operating licenses, license renewals, exemptions from the regulations, and license transfers. NRR is also authorized to issue orders to modify, suspend, or revoke a license. Changes to an emergency plan that would represent a decrease in effectiveness are similar to many of the routine licensing or regulatory actions the NRR staff has the authority to approve or deny (e.g., license amendments, American Society of Mechanical Engineers (ASME) Code relief requests, security plan changes, and quality assurance plan changes). Delegating to NRR staff the authority to approve or deny these types of emergency plan changes provides a consistent level of oversight for similar types of routine licensing actions.

It is estimated that the staff typically has 5 to 10 emergency plan changes submitted pursuant to 10 CFR 50.54(q) under review at any given time. The staff believes this number is a reasonable representation of the inventory that would be under review in the future. These submittals often involve multiple dockets (multiple units at the same site and/or multiple sites). The following list provides several examples of the typical types of EP changes that were submitted pursuant to 10 CFR 50.54(q) and are under current staff review. These changes are characterized as decreases in effectiveness consistent with the examples in Attachment 3 to RIS 2005-02, "Clarifying The Process For Making Emergency Plan Changes."

- A request to extend time goals for certain emergency response organization personnel to respond and activate the emergency response facility in the event of an emergency.
- A request to eliminate certain emergency response organization positions.

- A request for a change to an emergency action level (EAL) that would result in lesser or no classification of the emergency conditions (e.g., same conditions for previous EAL would classify as an Alert and revised EAL would classify as an Unusual Event).

Efficiencies to be Gained

Based on the above discussion, the staff's view is that no further delegation is necessary. Additionally, the staff believes that there are several efficiencies that may be gained with staff authority for approving or denying changes to emergency plans which would result in a decrease in plan effectiveness. Regardless of the Commission's decision on this SECY paper, licensee proposed changes to emergency plans that decrease the effectiveness of the plan would still be required to meet the requirements of 10 CFR 50.47(b) and Appendix E to 10 CFR Part 50. The staff would review such changes to determine if the plan, as revised, would provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

Further, the staff has significant technical expertise and knowledge in the EP field. Through the EP outreach program, the staff has developed relationships with key external stakeholders, such as the nuclear power industry, Federal Emergency Management Agency, non-governmental organizations, and State and local governments. The staff can quickly discuss proposed emergency plan changes with stakeholders, thereby fostering openness of the regulatory process in a short amount of time. In addition, succinct communications with licensees and stakeholders can be accommodated through the well-established processes used for other licensing actions. These processes ensure that interactions are timely and properly documented, and appropriate opportunities are provided for stakeholder participation (e.g., public meetings between NRC staff and licensees).

As stated above, the staff has the applicable expertise and framework in place to appropriately evaluate changes to emergency plans which would result in a decrease in plan effectiveness. Emergency plan change requests that are evaluated at the staff level are more efficient because it eliminates the process step of forwarding it to the Commission, thus allowing a more timely response to the licensee. If the authority is returned to the staff, the approval or denial of emergency plan changes would be processed in accordance with the routine licensing action concurrence process. If policy issues arise during staff review, these would be forwarded to the Commission, as is normal practice.

Stakeholder Perspectives

In the SRM for SECY-06-0200, the Commission directed the staff to seek out stakeholder perspective on the staff's proposed change in authority for the disposition of emergency plan changes that involve a decrease in effectiveness. This has not been completed since, as described above, staff authority to approve or deny emergency plan changes was the process in place prior to the issuance of the SRM for SECY-06-0200. To make the process by which the NRC will address proposed 10 CFR 50.54(q) changes that represent a decrease in effectiveness clearer, the staff intends to incorporate language similar to that which currently exists in 10 CFR 50.54(p)(1), as part of the currently planned rulemaking. Section 10 CFR 50.54(p)(1) states that for changes which would decrease the effectiveness of a security plan, "[A] licensee desiring to make such a change shall submit an application for an amendment to the licensee's license pursuant to § 50.90." Pursuing this change to 10 CFR 50.54(q) through the rulemaking process will provide an appropriate venue for seeking

stakeholder comments. The staff believes that delegating to the staff the authority to approve or deny proposed emergency plan changes that represent decreases in the effectiveness of a licensee's emergency plan is acceptable at this time since this authority existed prior to issuance of the SRM for SECY-06-0200, and thus would not affect stakeholders.

RECOMMENDATION:

The staff recommends that the Commission authorize the staff to approve or deny proposed emergency plan changes that represent decreases in the effectiveness of a licensee's emergency plan. Establishing staff authority for approving or denying changes submitted for approval by a licensee in accordance with 10 CFR 50.54(q) is appropriate based on the type of activity, its commensurate safety significance, and the regulatory stability and predictability associated with establishing the authority at the staff level. This will align the staff's authority to approve such changes with the Commission's delegation of authority to staff already in place to approve or deny routine licensing or regulatory actions (e.g., license amendments, ASME Code relief requests, security plan changes, and quality assurance plan changes) and more significant licensing or regulatory actions (e.g., construction permits, operating licenses, license renewals, exemptions from regulations, and license transfers), thus maintaining consistency in the licensing process. Since 10 CFR 1.43 provides regulatory and licensing authority to NRR for EP-related matters and MD 9.27 gives NRR the primary responsibility for implementing policies, programs, and procedures for EP-related matters, no change to MD 9.27 is necessary.

RESOURCES:

If the Commission approves the delegation of its authority under 10 CFR 50.54(q) to staff, efficiencies will be gained in the timeliness to complete these activities as well as the elimination of some steps in the process. If the Commission retains the authority, there would be a moderate increase in resource requirements associated with preparing each change package for Commission review and disposition of Commission comments. Consistent with the staff's recommendation for delegation of authority to the staff to approve or deny proposed emergency plan changes under 10 CFR 50.54(q), the anticipated staff resource needs of 0.75 full-time equivalent (FTE) for Nuclear Security and Incident Response (NSIR) and 0.25 FTE for NRR to review and evaluate these proposed emergency plan changes are contained in the Fiscal Year (FY) 2008 and FY 2009 budgets. The staff resources needed to implement the rulemaking commitment are 0.2 FTE and are also contained in the NSIR FY 2008 and FY 2009 budgets for the proposed EP rulemaking in SECY-06-0200.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection. The Office of the Chief Financial Officer has reviewed this paper for resource implications and concurs.

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Luis A. Reyes
Executive Director
for Operations

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OFFICE	NSIR/DDEP	NSIR/DDEP	NSIR/DPR	NSIR/DPR	NSIR/PMDA	NRR/DORL
NAME	DTailleart	KBrock	ASalus	MLeach	CSchum	REnnis
DATE	01/11/08	01/10/08	01/10/08	01/10/08	01/10/08	02/ 13 /08
OFFICE	NRR	OGC	OCFO	NRR/PMDA	NSIR/OD	EDO
NAME	JDyer (BBoger for)	BJones NLO (HBenowitz for)	WMcCabe (LBarnett for)	CCorley	RZimmerman (WDean for)	LReyes
DATE	01/11/08	02/12/08	01/17/08	01/11/08	01/18/08	02/25/08

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