

### *Agencies and Persons Consulted*

Cognizant personal from the Federal Emergency Management Agency and New York State (for the co-located licensee part of the rule change), were consulted as part of this rulemaking activity.

### *Finding of No Significant Impact: Availability*

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that the proposed amendments are not major Federal actions significantly affecting the quality of human environment, and therefore, an environmental impact statement is not required. These amendments would revise the emergency planning regulations to be consistent with current staff and licensee practices. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

### **Paperwork Reduction Act Statement**

This proposed rule increases the burden on co-located licensees to log activities and interactions with offsite agencies during the years that full or partial participation emergency preparedness exercises are not conducted and to prepare a one-time change to procedures to reflect the revised exercises requirements. The public burden for this information is estimated to average 30 hours per year. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150-0011.

### **Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

### **Regulatory Analysis**

The NRC has prepared a regulatory analysis for the proposed amendments. This analysis examines the costs and benefits of the alternatives considered by the Commission. The regulatory analysis is provided below and is also available for inspection in the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room 01-F21, Rockville, Maryland. Single

copies of the analysis are available as indicated in the **ADDRESSES** heading.

### *I. Statement of Problem and Objectives*

The Commission is proposing to make two changes to its emergency preparedness regulations contained in 10 CFR part 50, Appendix E. The first proposed amendment relates to the NRC approval of licensee changes to Emergency Action Levels, paragraph IV.B and the second proposed amendment relates to exercise requirements for co-located licensees, paragraph IV.F.2. A discussion of each of these proposed revisions follows.

(1) NRC approval of licensee changes to Emergency Action Levels, 10 CFR part 50, Appendix E, Paragraph IV.B. EALs are part of a licensee's emergency plan. There appears to be an inconsistency in the emergency planning regulations regarding the NRC approval of nuclear power plant licensee changes to emergency action levels. § 50.54(q) states that licensees may 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 10 CFR 50.47(b) and the requirements of Appendix E" to 10 CFR part 50. By contrast, Appendix E states that "EAL's shall be \* \* \* approved by NRC." However, the current industry practice, in general, has been to make revisions to EALs and to implement them without requesting NRC approval, after determining that the changes do not reduce the effectiveness of the emergency plan in accordance with § 50.54(q). When the determination is made that a proposed change constitutes a decrease in effectiveness, licensees submit the changes to NRC for review and approval. If a change involves a major change to the EAL scheme, for example, changing from an EAL scheme based on NUREG-0654 guidance to an EAL scheme based on NUMARC/NESP-007 guidance, it has been the industry practice to seek NRC approval before implementing the change. The NRC has been aware of the industry practice and has not objected to it. The Commission believes that the current regulations are unclear and can be interpreted to require prior NRC approval for all changes to a licensee's EALs.

(2) Exercise Requirements for Co-Located Licensees, 10 CFR part 50, Appendix E, Paragraph IV.F. The emergency planning regulations were significantly upgraded in 1980 after the accident at Three Mile Island (45 FR 55402; August 19, 1980). The 1980 regulations required an annual exercise of the onsite and offsite emergency

plans. In 1984, the regulations were amended to change the frequency of participation of State and local governmental authorities in nuclear power plant offsite exercises from annual to biennial (49 FR 27733; July 6, 1984). In 1996, the regulations were amended to change the frequency of exercising the licensees' onsite emergency plan from annual to biennial (61 FR 30129; June 14, 1996). Appendix E, to 10 CFR part 50, Paragraph IV.F.2, currently provides that the "offsite plans for each site shall be exercised biennially" with the full (or partial) participation of each offsite authority having a role under the plans, and that "each licensee at each site" shall conduct an exercise of its onsite emergency plan every two years, an exercise that may be included in the full participation biennial exercise (emphasis added). Thus, Paragraph IV.F.2 is ambiguous about the emergency preparedness exercise requirements where multiple nuclear power plants, each licensed to different licensees, are co-located at the same site: whether each licensee must participate in a full-participation exercise of the off-site plan every two years, or whether the licensees may alternate their participation such that a full-participation exercise is held every two years and each licensee (at a two-licensee site) participates in a full-participation exercise every four years.

Upon consideration of the language of the current regulation, and the legislative history of the exercise requirements, the Commission believes that the ambiguity in the current regulations can be interpreted that each nuclear power plant licensee co-located on the same site must participate in a full-participation offsite exercise every two years (and that each offsite authority is to participate on either a full or partial participation basis in each licensee's biennial offsite exercise). Upon consideration of the matter, the Commission believes that requiring each licensee on a co-located site to participate in a full-participation exercise every two years, and for the offsite authorities to participate in each licensee's full-participation exercise is not necessary to provide reasonable assurance that each licensee and the offsite authorities will be able to fulfill their responsibilities under the emergency plan should the plan be required to be implemented. Furthermore, the Commission believes that this interpretation could impose an undue regulatory burden on offsite authorities. Currently, there is only one nuclear power plant site with two