

require NRC resources for conducting a rulemaking.

#### *V. Estimation and Evaluation of Values and Impacts*

The proposed amendments would modify current requirements in the NRC's approval of changes to Emergency Action Levels (EALs) and the participation in emergency preparedness exercises for co-located licensees. The change in the requirement for NRC approval of EALs is being made solely for consistency, and that because it reflects current practice, as well as the Commission's original intent it does not impose a burden on licensees. However, the second change does modify the information collection requirements and impacts future co-located licensee burden. Current co-located licensees have implemented an emergency planning training regime consistent with the proposed rule.

The proposed amendment would require that future co-located licensees incorporate in their emergency planning procedures that each co-located licensee would hold a full participation emergency preparedness exercise with the offsite agencies once every four years. In addition, the licensee that does not conduct the full participation exercise with the offsite agencies will conduct a partial participation exercise with the offsite agencies every two years. Likewise each co-located licensee would log the activities and interactions with offsite authorities that are also conducted in the period between exercises. This proposed rule does not increase the burden on current co-located licensees because they have an emergency planning training regime consistent with the proposed rule. Future co-located licensees would keep a log of the activities and interactions with offsite authorities which is estimated to average 30 hour(s) per co-located licensee per year.

#### *VI. Presentation of Results*

As noted, the impact on a co-located licensee to implement the proposed rule change is a modest 30 hour(s) per year per co-located licensee. This time would be used to maintain a log of the activities and interactions with offsite authorities. At an assumed average hourly rate of \$156/hour, the total industry implementation cost is estimated at \$9,360. The cost for an individual co-located licensee is \$4,680 per year.

With respect to the EAL rule change, licensees would save staff time by having explicit NRC requirements and guidance that should assist the licensees

in the proper submittal of EAL changes. The impact of improved regulations on the NRC is a decrease in the amount of staff time needed to approve license EAL changes. This is estimated to be about a 100 staff-hour reduction or a \$8,000 savings to the NRC per year (assuming a \$80 hourly rate for NRC staff time). However, it is uncertain as to how many EAL changes might have been received by the NRC for review and approval.

There would be several additional benefits associated with these amendments. The greatest would be the increased assurance that the Commission's regulations are consistent and not ambiguous. Further, by addressing these issues generically, through rulemaking, rather than continuing the current case-by-case approach, it is expected that the burden on the NRC staff would be reduced by several hours for each license EAL change as well as future co-located licensee's exercise requirements that NRC would need to approve. Another beneficial attribute to this proposed action is regulatory efficiency resulting from the expeditious handling of future licensing actions by providing regulatory predictability and stability for the EAL changes as well as the exercise requirements for co-located licensees.

#### *VII. Decision Rationale for Selection of the Proposed Action*

As previously discussed, the additional burdens on a licensee and the NRC are expected to be modest. However, a revision of the requirements is desirable to remove ambiguities in the current regulations, while maintaining safety and reducing unnecessary regulatory burden.

#### *VIII. Implementation*

The NRC staff proposes that any Federal rulemaking take effect 90 days after publication of the final rule in the **Federal Register**.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

#### **Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that the proposed rule if issued, will not have a significant economic impact on a substantial number of small entities. The proposed rule would affect only States and licensees of nuclear power plants. These States and licensees do

not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, or the size standards established by the NRC (10 CFR 2.810).

#### **Backfit Analysis**

##### **(1) NRC Approval of EAL Changes**

The proposed rule, which eliminates the need for NRC review and approval for certain EAL changes, does not constitute a backfit as defined in 50.109(a)(1). Although 10 CFR 50.54(q) permits licensees to make changes to the emergency plan which do not decrease the effectiveness of the plan, 10 CFR part 50, Appendix E currently requires that EALs shall be approved by NRC. The proposed rulemaking would clarify the Appendix E requirement to clearly permit licensee changes to EALs without NRC review and approval if the changes do not decrease the effectiveness of the emergency plan. The proposed rule requires NRC review and approval for those EAL changes which decrease the effectiveness of the emergency plan, or constitute a change from one EAL scheme to another. The proposed rulemaking clarifies the requirements and represents the current practice of making changes under 50.54 (q) requirements and is therefore not a backfit.

In addition, the proposed change applies prospectively to changes initiated by licensees. The Commission has indicated in various rulemakings that the Backfit Rule does not protect the prospects of a potential applicant nor does the Backfit Rule apply when a licensee seeks a change in the terms and conditions of its license. A licensee-initiated change in an EAL does not fall within the scope of actions protected by the Backfit Rule, and therefore the Backfit Rule does not apply to this proposed rulemaking.

##### **(2) Co-Located Licensee**

The proposed rulemaking, which addresses the regulatory ambiguity regarding exercise participation requirements for co-located licensees, applies only to the existing co-located licensees for the Nine Mile Point and James A. Fitzpatrick site, and prospectively to future co-located licensees.

With respect to the Nine Mile Point and James A. FitzPatrick licensees, the proposed rule would arguably constitute a backfit, inasmuch as there is some correspondence between the licensees and the NRC which may be interpreted as constituting NRC approval of "alternating participation" by each licensee in a full-or partial-participation