



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 2, 2020

Dr. Jennifer L. Uhle
Vice President, Generation & Suppliers
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1201 F Street, NW, Suite 1100
Washington, DC 20004

SUBJECT: ADDENDUM TO U.S. NUCLEAR REGULATORY COMMISSION PLANNED ACTIONS RELATED TO EMERGENCY PREPAREDNESS BIENNIAL EXERCISE REQUIREMENTS FOR POWER REACTOR LICENSEES DURING THE CORONAVIRUS DISEASE 2019 PUBLIC HEALTH EMERGENCY

Dear Dr. Uhle:

By letter dated May 14, 2020, the U.S. Nuclear Regulatory Commission (NRC) transmitted its planned actions during the Coronavirus Disease 2019 (COVID-19) public health emergency (PHE) related to the requirements contained in Title 10 of the *Code of Federal Regulations* (10 CFR) Parts 30, 40, 50, 70, and 72 for full participation biennial exercises of radiological emergency plans.¹ Specifically, the NRC stated that, upon request from individual licensees, it is prepared to consider, on an expedited basis, exemptions from biennial emergency plan exercise requirements in 10 CFR 30.32(i)(3)(xii); 10 CFR 40.31(j)(3)(xii); 10 CFR Part 50, Appendix E, Section IV.F; 10 CFR 70.22(i)(3)(xii); and 10 CFR 72.32(a)(12)(i) and (ii).

The NRC is issuing this addendum to the May 14, 2020, letter to provide clarification and additional information to power reactor licensees seeking exemption from the conduct of the calendar year (CY) 2020 offsite biennial exercise required by Section IV.F.2.c of Appendix E to 10 CFR Part 50. The May 14, 2020, letter did not explicitly address seeking exemptions from the conduct of this offsite biennial exercise requirement.

Background

Section IV.F.2.a of Appendix E to 10 CFR Part 50 provides that a full participation exercise that tests as much of the licensee, State, and local emergency plans as is reasonably achievable shall be conducted for each site at which a power reactor is located. Section IV.F.2.b of Appendix E to 10 CFR Part 50 requires each licensee at each site to conduct an exercise of its onsite emergency plan every 2 years; this exercise may be included in the full participation biennial exercise required by Section IV.F.2.c. Section IV.F.2.c requires offsite plans for each site to be exercised biennially with full participation by each offsite authority having a role under the plan. In other words, the onsite exercise required by Section IV.F.2.b is not required to be performed in conjunction with the offsite exercise required by Section IV.F.2.c.

¹ Agencywide Documents Access and Management System (ADAMS) Accession No. ML20120A003.

Licenses are required to ensure that these biennial exercises are held every two years or else request an exemption. To facilitate exemption requests from this requirement, the NRC issued its May 14, 2020, letter, as well as Regulatory Issue Summary (RIS) 2006-03, "Guidance on Requesting an Exemption from Biennial Emergency Preparedness Exercise Requirements," dated February 24, 2006.² However, since the onsite and offsite biennial exercises are not required to be performed together, licensees may choose to conduct or to seek exemptions from the biennial exercise requirements of Sections IV.F.2.b and IV.F.2.c either separately or together, as described in RIS-2006-03. The May 14, 2020, letter did not explicitly address seeking exemptions from the conduct of the offsite biennial exercise requirement.

On June 23, 2020, the NRC held a public meeting to discuss potential exemptions from emergency preparedness (EP) biennial exercise requirements due to impacts from the COVID-19 PHE.³ During this meeting, State representatives commented that, while they are able to deal with multiple events at the same time, the conduct of drills or exercises under the extraordinary circumstances of the COVID-19 PHE would require additional planning to ensure the safety of participants.⁴ By letter dated July 24, 2020, the Conference of Radiation Control Program Directors (CRCPD) Committee on Emergency Response Planning (HS/ER-5) recommended that the NRC issue an exemption from the offsite biennial exercise requirement for CY 2020 and CY 2021.⁵ The letter stated that this recommendation was the result of careful review of the current exercise requirements, discussions with State radiation control program members, and an analysis of offsite response organizations' (ORO) response to the COVID-19 PHE. The CRCPD position is that offsite radiological EP exercises should not be conducted during a national emergency such as the COVID-19 PHE.

The NRC is mindful that State and local emergency response organizations across the Nation are currently focusing their time and resources on responding to the COVID-19 PHE as well as providing for public health and safety and the common defense and security. The COVID-19 PHE has increased resource demands on OROs that challenge the scheduling and performance of offsite biennial exercises in CY 2020. The NRC also understands that the conduct of required offsite biennial exercises scheduled for CY 2020 would divert public resources from the current PHE. Therefore, the NRC is prepared to consider, on an expedited basis, requests for exemption from the 10 CFR Part 50, Appendix E, Section IV.F.2.c requirement for offsite biennial exercises in CY 2020, with the next performance of the exercise to be no later than the end of CY 2022.

The NRC recognizes that even if a licensee were to be exempted from the requirement to conduct an offsite biennial exercise in CY 2020, in the event of an actual radiological emergency, offsite authorities would respond. Offsite authorities in all states are currently demonstrating response capabilities, including making decisions on protective actions for the

² NRC RIS-2006-03, "Guidance on Requesting an Exemption from Biennial Emergency Preparedness Exercise Requirements," February 24, 2006, ADAMS Accession No. ML053390039.

³ NRC Public Meeting Announcement, "Meeting with Potentially Affected Stakeholders to Discuss Potential Emergency Preparedness Biennial Exercise Exemptions due to impacts from the COVID-19 Public Health Emergency," June 5, 2020, ADAMS Accession No. ML20174A468.

⁴ NRC Public Meeting Summary, "Summary of June 23, 2020, Public Meeting with Nuclear Industry to Discuss Potential Emergency Preparedness Biennial Exercise Exemptions Due to COVID-19 Impacts," July 20, 2020, ADAMS Accession No. ML20198M514.

⁵ Letter from CRCPD Committee on Emergency Response Planning to NRC, "ORO Exemption Request for Exercises," July 24, 2020, ADAMS Accession No. ML20206K859.

public, in response to the COVID-19 PHE.⁶ Additionally, the NRC continues to monitor U.S. nuclear power plants to ensure that they operate safely during the COVID-19 PHE and that defense-in-depth is maintained to prevent accidents from happening and to mitigate their consequences.

The NRC has consulted with the Federal Emergency Management Agency (FEMA) on the readiness of OROs and the use of this information to inform the NRC decision to grant exemptions, per the NRC/FEMA Memorandum of Understanding.⁷ FEMA has recently performed assessments of all offsite emergency response plan capabilities and has concluded that offsite radiological EP remains adequate to provide reasonable assurance that appropriate measures can and will be taken to protect the health and safety of the public in a radiological emergency during the COVID-19 PHE.⁸ FEMA monitors response and preparedness capabilities of the OROs to ensure that the response to the current PHE does not adversely impact their ability to protect the public health and safety in the event of a radiological emergency at a commercial nuclear power plant. Exercises are just one of the many methods by which FEMA assesses and validates the adequacy of OROs' plans and ability to implement those plans. In accordance with current FEMA program guidance,⁹ FEMA has alternative means of conducting these assessments.

Based on the above, granting requests for exemption from the 10 CFR Part 50, Appendix E, Section IV.F.2.c requirement for offsite biennial exercises in CY 2020, with the next performance of the exercise to be no later than the end of CY 2022 to provide sufficient time to assess potential impacts and coordinate with exercise participants. This allows State and local governments to continue to focus their essential response efforts on the COVID-19 PHE. This exemption would apply only to the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.c, and would not address 44 CFR Part 350. An exemption from Section IV.F.2.c would not prevent a State or local authority, at its discretion, from demonstrating key skills in drills and exercises for the 8-year exercise cycle or prevent a State or local authority from conducting the exercise in CY 2020 or CY 2021.

Under 10 CFR 50.12, the NRC may grant exemptions from the requirements of the regulations in 10 CFR Part 50 that are authorized by law, will not present an undue risk to the public health and safety, are consistent with the common defense and security, and when special circumstances are present. Granting requests for exemption from the 10 CFR Part 50, Appendix E, Section IV.F.2.c requirement for offsite biennial exercises in accordance with NRC regulations would demonstrate that reasonable assurance is maintained. In the statement of considerations (SOC) for the final rule that established 10 CFR 50.12 (Specific Exemptions;

⁶ COVID-19 Resources for State Leaders, *Executive Orders – By State*, accessed August 12, 2020, <https://web.csg.org/covid19/executive-orders/>

⁷ "Memorandum of Understanding (MOU) Between the Department of Homeland Security / Federal Emergency Management Agency and Nuclear Regulatory Commission Regarding Radiological Response, Planning and Preparedness," December 7, 2015, ADAMS Accession No. ML15344A371.

⁸ FEMA, COVID-19 Preparedness Assessments for Nuclear Power Plants, ADAMS Accession Nos. ML20164A275, ML20174A603, ML20141L795, ML20170B043, ML20170B171, ML20167A175, ML20164A038, ML20154K696, ML20154K617, ML20150A110, and ML20162A056.

⁹ Program Manual, Radiological Emergency Preparedness, FEMA P-1028, December 2019, accessed August 12, 2020, https://www.fema.gov/media-library-data/1577108409695-4e49a0a56c8c62695dcc301272a1eda7/FEMA_REP_Program_Manual_Dec_2019.pdf

Clarification of Standards, Final Rule, 50 FR 50764, dated December 12, 1985), the Commission explained that:

While compliance with all NRC regulations provides reasonable assurance of adequate protection of the public health and safety, the converse is not correct, that failure to comply with one regulation or another is an indication of the absence of adequate protection, at least in a situation where the Commission has reviewed the noncompliance and found that it does not pose an “undue risk” to the public health and safety. Furthermore, the Commission has never defined the concept of “defense-in-depth” to preclude the granting of an exemption from a regulation as long as the applicable exemption criteria are met. In fact, the Commission has recognized that its regulations may provide for the possibility of exemptions when an appropriately high level of safety is in fact achieved and the public interest is served.

Further, the SOC states that “the Commission believes that the effect of an exemption on total facility safety is appropriate for consideration as a special circumstance.”

Based on these considerations, the rationale to support exemptions from the requirement for offsite biennial exercises may differ from the rationale to support exemptions from the requirement for onsite biennial exercises discussed in the NRC’s May 14, 2020, letter. As such, this addendum to the NRC’s May 14, 2020, letter provides clarification on the information to be provided to the NRC to receive expedited review of a request for exemption from the CY 2020 offsite biennial exercise requirement.

Requested Information

To receive expedited review of a request for exemption from the CY 2020 offsite biennial exercise requirement, a licensee should submit a request that contains the following information:

- a statement that a reasonable effort was made to reschedule the exercise during CY 2020, but was unsuccessful;
- a statement from responsible OROs that they are in agreement with the licensee’s exemption request and that they are committed to maintaining their radiological emergency plans; and
- a statement from responsible OROs that they are not impacted in a manner that would adversely affect their ability to maintain response capability to support emergency response activities to actual nuclear power plant radiological emergencies.

Review Process

The NRC will consider these exemption requests on a case-by-case basis and, if the requirements for an exemption are met, will grant the requests in writing. Based upon its review, the NRC may condition the grant of any exemption request, as appropriate and will notify FEMA of exemptions as they occur. If sufficient time is not available for the NRC to provide a prior written decision on an exemption request, then the NRC may provide a verbal decision that will be followed promptly by a letter documenting the decision.

Duration of Exemptions

As required by 10 CFR Part 50, Appendix E, Section IV.F.2.j, biennial exercises follow an 8-year cycle. The exercises conducted during the 8-year cycle provide multiple opportunities for OROs to demonstrate proficiency in the key skills necessary to implement principal functional areas of the emergency plan. An exemption from the 10 CFR Part 50, Appendix E, Section IV.F.2.c offsite biennial exercise requirement for CY 2020 would not prevent a demonstration of those key skills in subsequent drills and exercises for the 8-year exercise cycle or prevent a State who wants to conduct the exercise in CY 2020 or CY 2021 from doing so.

Should the COVID-19 PHE be lifted, exemptions that are approved under this process remain in effect until the performance of the next regularly scheduled 10 CFR Part 50, Appendix E, Section IV.F.2.c offsite biennial exercise in CY 2022 to allow for the assessment, scheduling, and coordination required to perform exercises.

How To Submit Requests

Licensees should make every effort to submit timely exemption requests. Licensees should continue to follow 10 CFR 50.4, "Written communications." To ensure timely receipt and review of these exemption requests, licensees should also send an e-mail with the request to their facility's NRC project manager, in addition to submitting the application as provided in NRC regulations.

Alternative Approaches

This letter does not preclude requests for exemption that take a different approach or present different rationales. The NRC will review such requests on a case-by-case basis.

If you have any questions about the contents of this letter or the May 14, 2020, letter, please contact your facility's NRC project manager.

Paperwork Reduction Act Statement

This letter contains guidance for implementing the voluntary information collections related to requesting exemptions from requirements contained in 10 CFR Part 50 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et. seq.). These information collections were approved by the Office of Management and Budget under control number 3150-0011.

Estimated burden per response to comply with this voluntary information collection request is 24 hours. Send comments regarding these information collections to the Information Services Branch (T6-A10M), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by e-mail to Infocollects.Resource@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid Office of Management and Budget control number.

Sincerely,

Ho K. Nieh, Director
Office of Nuclear Reactor Regulation

SUBJECT: ADDENDUM TO U.S. NUCLEAR REGULATORY COMMISSION PLANNED
ACTIONS RELATED TO EMERGENCY PREPAREDNESS BIENNIAL
EXERCISE REQUIREMENTS FOR POWER REACTOR LICENSEES DURING
THE CORONAVIRUS DISEASE 2019 PUBLIC HEALTH EMERGENCY

Identical letters sent to:

Dr. Jennifer L. Uhle
Vice President, Generation & Suppliers
Nuclear Energy Institute
1201 F Street, NW, Suite 1100
Washington, DC 20004

Mr. A. Christopher Bakken
Executive Vice President
Nuclear Operations & Chief Nuclear Officer
Entergy Nuclear
1340 Echelon Parkway
Jackson, MS 39213

Mr. Don Moul
Executive Vice President, Nuclear
Division and Chief Nuclear Officer
Florida Power & Light Company
Mail Stop: NT3/JW
15430 Endeavor Drive
Jupiter, FL 33478

SUBJECT: ADDENDUM TO U.S. NUCLEAR REGULATORY COMMISSION PLANNED ACTIONS RELATED TO EMERGENCY PREPAREDNESS BIENNIAL EXERCISE REQUIREMENTS FOR POWER REACTOR LICENSEES DURING THE CORONAVIRUS DISEASE 2019 PUBLIC HEALTH EMERGENCY DATED SEPTEMBER 2, 2020

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ADAMS Accession No.: ML20223A152

***via e-mail NRR-106**

OFFICE	NRR/DORL/LPL2-1/PM	NRR/DORL/LPL3/LA	NSIR/DPR/POB/BC	NSIR/DPR/RLB/BC
NAME	GEMiller*	JBurkhardt*	RKahler*	JAnderson*
DATE	8/12/2020	8/10/2020	8/12/2020	8/17/2020
OFFICE	QTE	NSIR/DPR/D	NRR/DORL/D	OGC (NLO)
NAME	JDougherty*	KBrock*	CErlanger*	TCampbell*
DATE	9/1/20	8/17/2020	8/17/2020	8/19/2020
OFFICE	OGC (NLO)	NSIR/D	NRR/D	
NAME	MSpencer*	BHolian*	HNieh*	
DATE	8/19/2020	8/17/2020	9/2/2020	

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September 2, 2020

Mr. A. Christopher Bakken
Executive Vice President
Nuclear Operations & Chief Nuclear Officer
Entergy Nuclear
1340 Echelon Parkway
Jackson, MS 39213

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Background

Section IV.F.2.a of Appendix E to 10 CFR Part 50 provides that a full participation exercise that tests as much of the licensee, State, and local emergency plans as is reasonably achievable shall be conducted for each site at which a power reactor is located. Section IV.F.2.b of Appendix E to 10 CFR Part 50 requires each licensee at each site to conduct an exercise of its onsite emergency plan every 2 years; this exercise may be included in the full participation biennial exercise required by Section IV.F.2.c. Section IV.F.2.c requires offsite plans for each site to be exercised biennially with full participation by each offsite authority having a role under the plan. In other words, the onsite exercise required by Section IV.F.2.b is not required to be performed in conjunction with the offsite exercise required by Section IV.F.2.c.

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The NRC recognizes that even if a licensee were to be exempted from the requirement to conduct an offsite biennial exercise in CY 2020, in the event of an actual radiological emergency, offsite authorities would respond. Offsite authorities in all states are currently demonstrating response capabilities, including making decisions on protective actions for the

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Based on the above, granting requests for exemption from the 10 CFR Part 50, Appendix E, Section IV.F.2.c requirement for offsite biennial exercises in CY 2020, with the next performance of the exercise to be no later than the end of CY 2022 to provide sufficient time to assess potential impacts and coordinate with exercise participants. This allows State and local governments to continue to focus their essential response efforts on the COVID-19 PHE. This exemption would apply only to the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.c, and would not address 44 CFR Part 350. An exemption from Section IV.F.2.c would not prevent a State or local authority, at its discretion, from demonstrating key skills in drills and exercises for the 8-year exercise cycle or prevent a State or local authority from conducting the exercise in CY 2020 or CY 2021.

Under 10 CFR 50.12, the NRC may grant exemptions from the requirements of the regulations in 10 CFR Part 50 that are authorized by law, will not present an undue risk to the public health and safety, are consistent with the common defense and security, and when special circumstances are present. Granting requests for exemption from the 10 CFR Part 50, Appendix E, Section IV.F.2.c requirement for offsite biennial exercises in accordance with NRC regulations would demonstrate that reasonable assurance is maintained. In the statement of considerations (SOC) for the final rule that established 10 CFR 50.12 (Specific Exemptions;

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⁹ Program Manual, Radiological Emergency Preparedness, FEMA P-1028, December 2019, accessed August 12, 2020, https://www.fema.gov/media-library-data/1577108409695-4e49a0a56c8c62695dcc301272a1eda7/FEMA_REP_Program_Manual_Dec_2019.pdf

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Requested Information

To receive expedited review of a request for exemption from the CY 2020 offsite biennial exercise requirement, a licensee should submit a request that contains the following information:

- a statement that a reasonable effort was made to reschedule the exercise during CY 2020, but was unsuccessful;
- a statement from responsible OROs that they are in agreement with the licensee’s exemption request and that they are committed to maintaining their radiological emergency plans; and
- a statement from responsible OROs that they are not impacted in a manner that would adversely affect their ability to maintain response capability to support emergency response activities to actual nuclear power plant radiological emergencies.

Review Process

The NRC will consider these exemption requests on a case-by-case basis and, if the requirements for an exemption are met, will grant the requests in writing. Based upon its review, the NRC may condition the grant of any exemption request, as appropriate and will notify FEMA of exemptions as they occur. If sufficient time is not available for the NRC to provide a prior written decision on an exemption request, then the NRC may provide a verbal decision that will be followed promptly by a letter documenting the decision.

Duration of Exemptions

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Should the COVID-19 PHE be lifted, exemptions that are approved under this process remain in effect until the performance of the next regularly scheduled 10 CFR Part 50, Appendix E, Section IV.F.2.c offsite biennial exercise in CY 2022 to allow for the assessment, scheduling, and coordination required to perform exercises.

How To Submit Requests

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Alternative Approaches

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Paperwork Reduction Act Statement

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Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid Office of Management and Budget control number.

Sincerely,

Ho K. Nieh, Director
Office of Nuclear Reactor Regulation



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 2, 2020

Mr. Don Moul
Executive Vice President, Nuclear
Division and Chief Nuclear Officer
Florida Power & Light Company
Mail Stop: NT3/JW
15430 Endeavor Drive
Jupiter, FL 33478

SUBJECT: ADDENDUM TO U.S. NUCLEAR REGULATORY COMMISSION PLANNED
ACTIONS RELATED TO EMERGENCY PREPAREDNESS BIENNIAL
EXERCISE REQUIREMENTS FOR POWER REACTOR LICENSEES DURING
THE CORONAVIRUS DISEASE 2019 PUBLIC HEALTH EMERGENCY

Dear Mr. Moul:

By letter dated May 14, 2020, the U.S. Nuclear Regulatory Commission (NRC) transmitted its planned actions during the Coronavirus Disease 2019 (COVID-19) public health emergency (PHE) related to the requirements contained in Title 10 of the *Code of Federal Regulations* (10 CFR) Parts 30, 40, 50, 70, and 72 for full participation biennial exercises of radiological emergency plans.¹ Specifically, the NRC stated that, upon request from individual licensees, it is prepared to consider, on an expedited basis, exemptions from biennial emergency plan exercise requirements in 10 CFR 30.32(i)(3)(xii); 10 CFR 40.31(j)(3)(xii); 10 CFR Part 50, Appendix E, Section IV.F; 10 CFR 70.22(i)(3)(xii); and 10 CFR 72.32(a)(12)(i) and (ii).

The NRC is issuing this addendum to the May 14, 2020, letter to provide clarification and additional information to power reactor licensees seeking exemption from the conduct of the calendar year (CY) 2020 offsite biennial exercise required by Section IV.F.2.c of Appendix E to 10 CFR Part 50. The May 14, 2020, letter did not explicitly address seeking exemptions from the conduct of this offsite biennial exercise requirement.

Background

Section IV.F.2.a of Appendix E to 10 CFR Part 50 provides that a full participation exercise that tests as much of the licensee, State, and local emergency plans as is reasonably achievable shall be conducted for each site at which a power reactor is located. Section IV.F.2.b of Appendix E to 10 CFR Part 50 requires each licensee at each site to conduct an exercise of its onsite emergency plan every 2 years; this exercise may be included in the full participation biennial exercise required by Section IV.F.2.c. Section IV.F.2.c requires offsite plans for each site to be exercised biennially with full participation by each offsite authority having a role under the plan. In other words, the onsite exercise required by Section IV.F.2.b is not required to be performed in conjunction with the offsite exercise required by Section IV.F.2.c.

¹ Agencywide Documents Access and Management System (ADAMS) Accession No. ML20120A003.

Licenses are required to ensure that these biennial exercises are held every two years or else request an exemption. To facilitate exemption requests from this requirement, the NRC issued its May 14, 2020, letter, as well as Regulatory Issue Summary (RIS) 2006-03, "Guidance on Requesting an Exemption from Biennial Emergency Preparedness Exercise Requirements," dated February 24, 2006.² However, since the onsite and offsite biennial exercises are not required to be performed together, licensees may choose to conduct or to seek exemptions from the biennial exercise requirements of Sections IV.F.2.b and IV.F.2.c either separately or together, as described in RIS-2006-03. The May 14, 2020, letter did not explicitly address seeking exemptions from the conduct of the offsite biennial exercise requirement.

On June 23, 2020, the NRC held a public meeting to discuss potential exemptions from emergency preparedness (EP) biennial exercise requirements due to impacts from the COVID-19 PHE.³ During this meeting, State representatives commented that, while they are able to deal with multiple events at the same time, the conduct of drills or exercises under the extraordinary circumstances of the COVID-19 PHE would require additional planning to ensure the safety of participants.⁴ By letter dated July 24, 2020, the Conference of Radiation Control Program Directors (CRCPD) Committee on Emergency Response Planning (HS/ER-5) recommended that the NRC issue an exemption from the offsite biennial exercise requirement for CY 2020 and CY 2021.⁵ The letter stated that this recommendation was the result of careful review of the current exercise requirements, discussions with State radiation control program members, and an analysis of offsite response organizations' (ORO) response to the COVID-19 PHE. The CRCPD position is that offsite radiological EP exercises should not be conducted during a national emergency such as the COVID-19 PHE.

The NRC is mindful that State and local emergency response organizations across the Nation are currently focusing their time and resources on responding to the COVID-19 PHE as well as providing for public health and safety and the common defense and security. The COVID-19 PHE has increased resource demands on OROs that challenge the scheduling and performance of offsite biennial exercises in CY 2020. The NRC also understands that the conduct of required offsite biennial exercises scheduled for CY 2020 would divert public resources from the current PHE. Therefore, the NRC is prepared to consider, on an expedited basis, requests for exemption from the 10 CFR Part 50, Appendix E, Section IV.F.2.c requirement for offsite biennial exercises in CY 2020, with the next performance of the exercise to be no later than the end of CY 2022.

The NRC recognizes that even if a licensee were to be exempted from the requirement to conduct an offsite biennial exercise in CY 2020, in the event of an actual radiological emergency, offsite authorities would respond. Offsite authorities in all states are currently demonstrating response capabilities, including making decisions on protective actions for the

² NRC RIS-2006-03, "Guidance on Requesting an Exemption from Biennial Emergency Preparedness Exercise Requirements," February 24, 2006, ADAMS Accession No. ML053390039.

³ NRC Public Meeting Announcement, "Meeting with Potentially Affected Stakeholders to Discuss Potential Emergency Preparedness Biennial Exercise Exemptions due to impacts from the COVID-19 Public Health Emergency," June 5, 2020, ADAMS Accession No. ML20174A468.

⁴ NRC Public Meeting Summary, "Summary of June 23, 2020, Public Meeting with Nuclear Industry to Discuss Potential Emergency Preparedness Biennial Exercise Exemptions Due to COVID-19 Impacts," July 20, 2020, ADAMS Accession No. ML20198M514.

⁵ Letter from CRCPD Committee on Emergency Response Planning to NRC, "ORO Exemption Request for Exercises," July 24, 2020, ADAMS Accession No. ML20206K859.

public, in response to the COVID-19 PHE.⁶ Additionally, the NRC continues to monitor U.S. nuclear power plants to ensure that they operate safely during the COVID-19 PHE and that defense-in-depth is maintained to prevent accidents from happening and to mitigate their consequences.

The NRC has consulted with the Federal Emergency Management Agency (FEMA) on the readiness of OROs and the use of this information to inform the NRC decision to grant exemptions, per the NRC/FEMA Memorandum of Understanding.⁷ FEMA has recently performed assessments of all offsite emergency response plan capabilities and has concluded that offsite radiological EP remains adequate to provide reasonable assurance that appropriate measures can and will be taken to protect the health and safety of the public in a radiological emergency during the COVID-19 PHE.⁸ FEMA monitors response and preparedness capabilities of the OROs to ensure that the response to the current PHE does not adversely impact their ability to protect the public health and safety in the event of a radiological emergency at a commercial nuclear power plant. Exercises are just one of the many methods by which FEMA assesses and validates the adequacy of OROs' plans and ability to implement those plans. In accordance with current FEMA program guidance,⁹ FEMA has alternative means of conducting these assessments.

Based on the above, granting requests for exemption from the 10 CFR Part 50, Appendix E, Section IV.F.2.c requirement for offsite biennial exercises in CY 2020, with the next performance of the exercise to be no later than the end of CY 2022 to provide sufficient time to assess potential impacts and coordinate with exercise participants. This allows State and local governments to continue to focus their essential response efforts on the COVID-19 PHE. This exemption would apply only to the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.c, and would not address 44 CFR Part 350. An exemption from Section IV.F.2.c would not prevent a State or local authority, at its discretion, from demonstrating key skills in drills and exercises for the 8-year exercise cycle or prevent a State or local authority from conducting the exercise in CY 2020 or CY 2021.

Under 10 CFR 50.12, the NRC may grant exemptions from the requirements of the regulations in 10 CFR Part 50 that are authorized by law, will not present an undue risk to the public health and safety, are consistent with the common defense and security, and when special circumstances are present. Granting requests for exemption from the 10 CFR Part 50, Appendix E, Section IV.F.2.c requirement for offsite biennial exercises in accordance with NRC regulations would demonstrate that reasonable assurance is maintained. In the statement of considerations (SOC) for the final rule that established 10 CFR 50.12 (Specific Exemptions;

⁶ COVID-19 Resources for State Leaders, *Executive Orders – By State*, accessed August 12, 2020, <https://web.csg.org/covid19/executive-orders/>

⁷ "Memorandum of Understanding (MOU) Between the Department of Homeland Security / Federal Emergency Management Agency and Nuclear Regulatory Commission Regarding Radiological Response, Planning and Preparedness," December 7, 2015, ADAMS Accession No. ML15344A371.

⁸ FEMA, COVID-19 Preparedness Assessments for Nuclear Power Plants, ADAMS Accession Nos. ML20164A275, ML20174A612, ML20141L795, ML20170B043, ML20170B171, ML20167A175, ML20164A038, ML20154K696, ML20154K617, ML20150A110, and ML20162A056.

⁹ Program Manual, Radiological Emergency Preparedness, FEMA P-1028, December 2019, accessed August 12, 2020, https://www.fema.gov/media-library-data/1577108409695-4e49a0a56c8c62695dcc301272a1eda7/FEMA_REP_Program_Manual_Dec_2019.pdf

Clarification of Standards, Final Rule, 50 FR 50764, dated December 12, 1985), the Commission explained that:

While compliance with all NRC regulations provides reasonable assurance of adequate protection of the public health and safety, the converse is not correct, that failure to comply with one regulation or another is an indication of the absence of adequate protection, at least in a situation where the Commission has reviewed the noncompliance and found that it does not pose an “undue risk” to the public health and safety. Furthermore, the Commission has never defined the concept of “defense-in-depth” to preclude the granting of an exemption from a regulation as long as the applicable exemption criteria are met. In fact, the Commission has recognized that its regulations may provide for the possibility of exemptions when an appropriately high level of safety is in fact achieved and the public interest is served.

Further, the SOC states that “the Commission believes that the effect of an exemption on total facility safety is appropriate for consideration as a special circumstance.”

Based on these considerations, the rationale to support exemptions from the requirement for offsite biennial exercises may differ from the rationale to support exemptions from the requirement for onsite biennial exercises discussed in the NRC’s May 14, 2020, letter. As such, this addendum to the NRC’s May 14, 2020, letter provides clarification on the information to be provided to the NRC to receive expedited review of a request for exemption from the CY 2020 offsite biennial exercise requirement.

Requested Information

To receive expedited review of a request for exemption from the CY 2020 offsite biennial exercise requirement, a licensee should submit a request that contains the following information:

- a statement that a reasonable effort was made to reschedule the exercise during CY 2020, but was unsuccessful;
- a statement from responsible OROs that they are in agreement with the licensee’s exemption request and that they are committed to maintaining their radiological emergency plans; and
- a statement from responsible OROs that they are not impacted in a manner that would adversely affect their ability to maintain response capability to support emergency response activities to actual nuclear power plant radiological emergencies.

Review Process

The NRC will consider these exemption requests on a case-by-case basis and, if the requirements for an exemption are met, will grant the requests in writing. Based upon its review, the NRC may condition the grant of any exemption request, as appropriate and will notify FEMA of exemptions as they occur. If sufficient time is not available for the NRC to provide a prior written decision on an exemption request, then the NRC may provide a verbal decision that will be followed promptly by a letter documenting the decision.

Duration of Exemptions

As required by 10 CFR Part 50, Appendix E, Section IV.F.2.j, biennial exercises follow an 8-year cycle. The exercises conducted during the 8-year cycle provide multiple opportunities for OROs to demonstrate proficiency in the key skills necessary to implement principal functional areas of the emergency plan. An exemption from the 10 CFR Part 50, Appendix E, Section IV.F.2.c offsite biennial exercise requirement for CY 2020 would not prevent a demonstration of those key skills in subsequent drills and exercises for the 8-year exercise cycle or prevent a State who wants to conduct the exercise in CY 2020 or CY 2021 from doing so.

Should the COVID-19 PHE be lifted, exemptions that are approved under this process remain in effect until the performance of the next regularly scheduled 10 CFR Part 50, Appendix E, Section IV.F.2.c offsite biennial exercise in CY 2022 to allow for the assessment, scheduling, and coordination required to perform exercises.

How To Submit Requests

Licensees should make every effort to submit timely exemption requests. Licensees should continue to follow 10 CFR 50.4, "Written communications." To ensure timely receipt and review of these exemption requests, licensees should also send an e-mail with the request to their facility's NRC project manager, in addition to submitting the application as provided in NRC regulations.

Alternative Approaches

This letter does not preclude requests for exemption that take a different approach or present different rationales. The NRC will review such requests on a case-by-case basis.

If you have any questions about the contents of this letter or the May 14, 2020, letter, please contact your facility's NRC project manager.

Paperwork Reduction Act Statement

This letter contains guidance for implementing the voluntary information collections related to requesting exemptions from requirements contained in 10 CFR Part 50 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et. seq.). These information collections were approved by the Office of Management and Budget under control number 3150-0011.

Estimated burden per response to comply with this voluntary information collection request is 24 hours. Send comments regarding these information collections to the Information Services Branch (T6-A10M), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by e-mail to Infocollects.Resource@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid Office of Management and Budget control number.

Sincerely,

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