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PROPOSED RULE PR 50
(68FR 43673)

October 2, 2003

Secretary
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Rulemaking and Adjudications Branch

Subject: Emergency Planning and Preparedness for Production and Utilization
Facilities, Proposed Rule (68 Fed. Reg. 43673, July 24, 2003)
RIN 3150-AH00

The Nuclear Energy Institute (NEI)¹ submits these comments on behalf of the nuclear industry. We have reviewed and support the adoption of the Proposed Rule, Emergency Planning and Preparedness for Production and Utilization Facilities (68 Fed. Reg. 43673, July 24, 2003) to amend 10CFR Part 50 Appendix E.IV regarding NRC approval of licensee changes to Emergency Action Levels (EAL) and exercise requirements for co-located licensees. These changes will reduce unnecessary regulatory burden on licensees while maintaining an acceptable level of safety.

NRC review and approval of every EAL change prior to implementation is not necessary to provide reasonable assurance that EALs will continue to provide an acceptable level of safety. Requiring prior NRC review and approval in the two situations described in the proposed rule (EAL changes that potentially decrease the effectiveness of the emergency plan and changing from one EAL scheme to another) will ensure adequate regulatory oversight of the licensee's emergency classification system. The NRC will continue to review through the inspection process the licensees determinations as to which EAL changes represent potential decreases in the effectiveness of the Emergency Plan. These changes will provide a means for licensees to improve their EALs without undo regulatory burden.

The proposed rulemaking could be further improved by establishing clear criteria for what constitutes a "decrease in effectiveness" of the Emergency Plan. The

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory aspects of generic operational and technical issues. NEI members include all companies licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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rulemaking, less this critical definition, lacks the regulatory stability sought by the industry and the Commission.

Confusion and inconsistencies have occurred in the past regarding the process for implementation of 10 CFR 50.54(q) for emergency plan changes. The original criterion for judging whether changes made pursuant to 10 CFR 50.54(q) decreased the *effectiveness of the plan* was whether the *overall effectiveness of the plan* was decreased. The language in 10 CFR 50.54(q) that licensees "*may make changes to these 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 paragraph 50.47(b) and the requirements of Appendix E to this part,*" should be clarified.

Changes that meet the following criterion should be permitted without prior NRC approval. A change to an emergency plan will not decrease the effectiveness of the plan if the change will not decrease the abilities of the emergency response organization, and/or supporting emergency response facilities and equipment, as required by paragraphs CFR 50.47(b) and Appendix E, or equivalent measures approved under 10 CFR 50.47(c), to reasonably assure the adequate protection of public health and safety in the event of a radiological emergency as stated in 10 CFR 50.47(a)(1). The change cannot delete any of the capabilities described in 10 CFR 50.47 (b) and (d), or in Appendix E to 10 CFR Part 50.

Clarifying exercise requirements to allow alternating participation in exercises for co-located licensees will remove ambiguity that currently exists. The proposed exercise frequency, coupled with the detailed activities and interactions will continue to provide a sufficient level of assurance of offsite emergency preparedness. Also, it will provide clear guidance for future licensing actions, and avoid undue burden on offsite response organizations. Section B. [43675- 43676] is very specific in its wording as to what is the responsibility of the licensee. In this regard the rule should not be specific but refer to the commitments defined in the respective emergency response plans. The licensee state and local emergency response organizations should have the latitude to determine the appropriate training and implementation responsibilities.

Once again, the industry appreciates the efforts the NRC staff has made to clarify the regulations. If you have any questions please contact me at (202) 739-8110 or e-mail (apn@nei.org).

Sincerely,



Alan Nelson