

April 3, 2008

MEMORANDUM TO: Arlon O. Costa, Branch Chief
Financial Policy and Rulemaking Branch
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

FROM: Lauren Quiñones, Project Manager **/RA/**
Financial Policy and Rulemaking Branch
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

SUBJECT: SUMMARY OF MARCH 5, 2008 MEETING TO DISCUSS
EMERGENCY PREPAREDNESS DRAFT PRELIMINARY RULE
LANGUAGE

On March 5, 2008, a category 2 public meeting was held between the U.S. Nuclear Regulatory Commission (NRC), and industry representatives, Non-governmental Organizations, State representatives and interested stakeholders, at NRC Headquarters, One White Flint North, 11555 Rockville Pike, Rockville, MD. The purpose of the meeting was to discuss the draft preliminary rule language for the rulemaking to enhance emergency preparedness regulations and guidance, and to solicit informal stakeholder feedback. A summary of the meeting discussion and a list of meeting attendees are enclosed. The slides presented by NRC can be found in ADAMS Accession Number ML080640212.

Enclosures: 1. Meeting Summary
2. List of Attendees

CONTACT: Lauren Quinones, NRR/DPR
301-415-2007

Kathryn Brock, NSIR/DPR
301-415-2015

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SUMMARY OF MARCH 5, 2008 MEETING TO DISCUSS EMERGENCY PREPAREDNESS DRAFT PRELIMINARY RULE LANGUAGE

The U. S. Nuclear Regulatory Commission (NRC) staff is engaged in rulemaking to enhance emergency preparedness regulations and guidance. The purpose of the meeting was to discuss the draft preliminary rule language for the rulemaking to enhance emergency preparedness regulations and guidance, and to solicit informal stakeholder feedback. The draft preliminary rule language was made available prior to the meeting to inform stakeholders of the staff's current thinking on how the rule language could be written. The NRC did not solicit formal public comments on the preliminary draft rule language. The draft preliminary rule language has not been reviewed by the Commission, and this preliminary draft rule language may be subject to significant revisions during the rulemaking process. The Proposed Rule is scheduled to be published in the Federal Register in about February 2009 and a public comment process will take place, however the staff believes that outreach early in the rulemaking process will facilitate better communication and a smoother transition from proposed rule to final rule.

The NRC presented the 11 issues included in this rulemaking, the guidance documents impacted by the rule change, and the steps to follow for public participation in the process. The issues included in this rulemaking originated from the Interim Compensatory Measures Orders issued to licensees in 2002, NRC Bulletin 2005-02, and an NRC staff review of EP regulations and guidance. Each of the 11 issues presented by the staff is summarized below, as well as the public comments and questions. Staff will not be formally responding to the public comments and questions; however the information will be considered by the staff in developing the Proposed Rule.

1. On-Shift Collateral Duties

- Staff Summary: Neither NRC regulations nor guidance addresses the assignment of multiple duties to staff expected to respond in an emergency. The action to codify requirements would ensure that emergency response organization (ERO) personnel do not have duties that would compete or interfere with responsibilities to implement the emergency plan.

- Comments/questions

A member of the Nuclear Energy Institute's (NEI's) Task Force suggested that the terms used in this section of the draft proposed rule language need clarification. Specifically, the commenter stated that NRC should define "collateral duties" and "competing duties."

The NEI Task Force commenter also asked how NRC will determine what duties are allowable collateral duties and what collateral duties are unacceptable. The commenter expressed that industry would like to be involved in the process which the NRC will come to this determination.

Another commenter asked how NRC is going to capture the licensees' current practice with regard to collateral duties. The commenter expressed concerns that the NRC has not captured the degree to which licensees are currently assigning collateral duties to emergency response workers. The commenter stated that emergency personnel should report cases of noncompliance where a licensee assigns collateral duties that interfere with the individual's emergency response duties.

A state contact stated that collateral duty issues arise when licensees reassign individuals during fuel movement in support of the [siren notification or cyber-notification] program and this should be taken into consideration.

2. Emergency Action Levels for Security Events

- Staff Summary: Traditionally emergency action levels (EALs) have been based upon plant conditions, however using a plant condition as the indicator for an EAL may not be appropriate for a hostile action based emergency. The purpose is to provide regulatory certainty and establish unambiguous enforceable emergency classification and action level criteria for hostile action events and ensure that appropriate response actions for hostile action events are implemented. The regulations will explicitly state that EAL schemes include hostile actions.

- Comments/questions

A member of the NEI Task Force asked why NRC feels that a regulatory change is needed when EALs for security events are already implemented by licensees on a voluntary basis. NRC responded that codification is needed to provide regulatory clarity and uniformity throughout industry.

Another commenter asked how something that is not a license condition can be enforced. As a follow up, the commenter asked if EALs for security events will become a license condition once it is codified into regulation.

It was suggested that in supplemental information on the rulemaking, the agency should discuss the issues of enforceability of NRC Bulletin 2005-02 ("Bulletin") and regulations in contrast to license conditions.

3. Emergency Response Organization Augmentation and Alternate Facilities

- Staff Summary: In a hostile action based event it may be necessary to send emergency response staff to an alternate facility if the technical support center and operations support center are not secured. These actions are already being implemented and the NRC does not intend to make changes to its regulations and guidance more restrictive than what is already outlined in RIS-2006-12. The purpose of this position is to ensure that the ERO have the ability of the ERO to take actions to mitigate facility damage or implement protective measures which require an alternate facility for the ERO.

- Comments/questions

An NEI Task Force member asked if the intent of the rule change goes beyond what was required in the Bulletin. The commenter explained that under the draft proposed rule language; alternate facilities must have the ability to classify events, which is not required under the Bulletin. The commenter also stated that the NRC needs to clearly define its expectations of an alternate facility's functionality. The commenter said that the draft proposed rule language does not sufficiently describe this functionality. Specifically, the commenter asked if the alternate facility is simply a gathering area; or, if it needs greater capabilities that replicate other facilities' capabilities.

Another commenter asked if alternate facilities would be located in the 10 mile emergency planning zone (EPZ). NRC responded that the alternative facility would be

no further than 30 miles from the site. In response, a state contact suggested that NRC be specific when defining where the alternate facility should be located. With specific guidance, OROs will be better informed as they plan how to stage responders.

One commenter stated that the NRC must suggest a distance that is neither too far away from, nor too close to the site. The commenter explained that some emergency operations facilities (EOFs) are fairly close to facilities, which means that an accident of greater consequence would force a licensee to move its EOF during an emergency.

4. Licensee Coordination with Offsite Response Organizations

- Staff Summary: The NRC believes that the regulations should be amended to codify requirements for licensees to coordinate response with OROs to ensure that these organizations can meet the emergency plan requirements when responding to hostile action events.

- Comments/questions

One commenter stated that when assessing resource availability, OROs should not assume that they will be able to borrow resources and supplies from another region of the state. In the case of hostile actions, multiple sites within a state could be under attack, which would prevent regions from sharing resources.

A state contact asked how the NRC would define adequate resources. The NRC responded that the key concern is the use of local law enforcement agency personnel who have responsibilities in an offsite response plan. However, during a hostile action, the same individuals would be needed onsite to deter the attacker. NRC explained that the licensee would need to ensure that OROs have resource allocation contingencies in place to address this potential issue. The commenter responded that state and local authorities should be able to determine what is "adequate," not the NRC or licensees.

An NEI Task Force member stated that the NRC should clarify the term "collateral duties" in the context of offsite responders. In addition, the commenter asked if FEMA is involved in defining this term. NRC responded that the NRC is working with FEMA on issues that involve offsite responders.

Another commenter suggested that OROs should use caution as they assess adequate resources and make contingency plans. If contingency plans include reassigning duties from law enforcement to other state officials (such as state Department of Transportation workers assuming traffic control activities), then OROs need to recognize that the public may respond differently to these officials.

A commenter emphasized the importance of resources, such as portal monitors. The commenter stated that licensees must evaluate the need for particular resources, and the NRC must then assess whether or not a licensee has provided a sufficient amount of resources.

An NEI representative stated that OROs need to determine what the priorities are during an event. The commenter suggested that the National Response Plan allows for access

to other government agencies during an emergency response, and FEMA should be involved in this coordination.

A state representative asked if the NRC would provide a list of requirements on what resources are needed. NRC staff explained that the burden is on licensees to evaluate the adequacy of OROs resources and coordinate with OROs to ensure that the emergency plan can be implemented as written. The staff indicated that there will be more detail in guidance to explain this process.

An NEI representative asked how the adequacy of resource needs and availability would be demonstrated in drills and exercises.

5. Protection for Onsite Personnel

- Staff Summary: Existing NRC regulations do not require emergency plan provisions to protect onsite personnel during hostile action emergencies, and the NRC believes that this potential lack of protection for emergency responders could result in personnel harm if the licensees do not implement the emergency plan effectively. In addition, the licensee needs to identify alternative protective action schemes and site-specific solutions.

- Comments/questions

A member of the NEI Task Force asked if NRC's intent is to go beyond what is included in the Bulletin. NRC responded that the intent of the draft proposed rule language is to codify what is in the Bulletin, and not go beyond those requirements. As a follow-up question, the NEI Task Force member asked if the draft requirements apply to emergency workers and non-emergency workers onsite, as well as any individuals inside the emergency planning zone. NRC staff explained that the draft proposed language addresses onsite workers only, and not other individuals located in the EPZ.

6. Security Event-Based Drills and Exercises

- Staff Summary: The purpose is to incorporate hostile action scenarios into training, drill, and exercise programs and to ensure that drills and exercises scenarios are challenging, incorporate a wide range of scenarios, and avoid preconditioning.

- Comments/questions

A member of the NEI Task Force asked if the biennial exercises referenced in the draft proposed rule language is spread over a six-year cycle. The NRC staff responded that, as of now, it is a six-year cycle, but the cycle might be changed (e.g., to an eight-year cycle). The NEI commenter also asked if the draft proposed rule language applies to all exercises. The staff responded that the rule language does apply to all drills and exercises. In response, the commenter stated that the draft rule language is somewhat prescriptive in terms of outlining required scenario elements for each biennial exercise planning cycle. The commenter suggested that this detail is contrary to the NRC's goal of unpredictability.

The commenter also expressed that industry is committed to enhancing the drill and exercise program, but the work industry has done independently is not finalized yet. The NRC staff stated that the draft proposed rule language is broader than NEI's work on drills and exercises, but the staff explained that their development of the rule language

should be in step with what the NEI working group is doing on its drill and exercise program.

With regard to the draft proposed rule language for 10 CFR 50, Appendix E, the NEI commenter asked what is meant by “mitigative strategies” in Section IV.F.2.j. The staff explained that this term is described in the Bulletin, and that the guidance will clarify the terminology.

An NEI commenter asked if the draft proposed requirement for licensees to submit exercise scenarios for NRC approval conflicts with the requirement for licensees to self-identify weaknesses after conducting a drill or exercise. The NRC staff responded that this draft proposed requirement should not affect licensees in this way. Instead, NRC’s review will ensure that the scenarios fully address the drill and exercise objectives.

A state contact asked why NRC was considering an eight-year cycle for the biennial exercise program. The NRC staff explained that this is just a concept under consideration. The thought is that if a biennial exercise must involve a minimal release, then it would occur one-quarter of the time (once over the eight-year cycle), rather than one third of the time (once over the six-year cycle).

A state contact asked if licensees need to demonstrate actual EP activities as part of its General Emergency exercises (e.g., conducting decontamination, setting up shelters, etc), or the capability to carry out these activities. The commenter questioned whether these exercises were meant to test a licensee’s decision-making processes or actions.

A state representative asked if FEMA would continue to review drill and exercise scenarios given NRC’s planned review under the draft proposed rule language. The NRC staff explained that NRC would only review the onsite portion of drill and exercise scenarios, while FEMA would review offsite components.

Another commenter stated that licensees should conduct drills and exercises more often, not less often, and these drills and exercises should be designed as sizable actions. The commenter suggested that a drill without a release is not realistic. The NRC staff explained that the draft proposed rule language does not call for fewer drills and exercises. Instead, the draft language requires exercising the same amount, except there might be a slight increase in burden on licensees.

A state contact expressed support for NRC reviews of drills and exercises. The commenter, however, suggested that scenarios must be as realistic as possible, and cautioned against requiring certain types of releases, or always requiring licensees to exercise to the General Emergency level. These requirements may continue to cause pre-conditioning of licensee staff.

A commenter from NEI suggested that the scope of drills and exercises must align with the concept of reasonable assurance. The commenter explained that the content of drills and exercises must inform reasonable assurance determinations.

A state commenter stated that an eight-year biennial exercise cycle may be insufficient because staff may turn over frequently and new hires need to be tested on a regular basis under the various scenarios. The commenter also expressed a need for clarification on when NUREG-0654 would be updated. The commenter also mentioned that participants generally do not appreciate drills and exercises that do not involve radiological releases.

Another commenter suggested that the existing drills and exercises program lacks reality. The commenter stated that there needs to be an element of surprise in the program in order to accurately test performance of EP activities.

7. Decrease in Effectiveness

- Staff Summary: The purpose is to maintain capabilities and resources relative to the emergency plan, to ensure changes to the approved emergency plan are properly evaluated, to ensure changes that reduce the effectiveness of the plan are reviewed by NRC and to ensure consistent and predictable implementation and enforcement.

- Comments/questions

An NEI Task Force member expressed full support for this regulatory change. The commenter suggested that some clarification is needed. In particular, the commenter suggested that NRC provide industry guidance on how to implement the draft proposed revisions to Section 50.54(q). The commenter stated that industry can provide input on the guidance needed. In particular, the commenter stated that it would be best to put examples in guidance rather than in regulation.

A state commenter raised a concern about footnote 4 in 10 CFR 50, Appendix E, Section IV.F.2.a. The commenter suggested that NRC consider the contents of the National Response Plan.

Another commenter stated that NRC should anticipate situations involving role conflict among emergency responders. The commenter suggested that during an emergency, there will be attrition by first responders who will attend to their families and not their jobs. The commenter stated that he has eight studies from Old Dominion University and UCLA demonstrating that during an actual emergency, first responders may leave their work duties to attend to their own family. The commenter suggested that NRC needs to address this issue. The commenter asked if this a high priority issue, particularly in formulating more realistic drill and exercise scenarios. NRC indicated that this issue was the subject of research and consideration.

8. Emergency Classification Timeliness

- Staff Summary: The purpose is to ensure timely emergency response actions, including notification of offsite response organizations, to enhance ability to implement protective measures and to instill a sense of urgency for classification, but not force incorrect classifications due to time constraints.

- Comments/questions

A commenter from NEI stated that the industry prioritizes event classification and has a high standard for accuracy. The commenter cautioned that the NRC should be aware of

possible unintended consequences associated with rushing event classification. The commenter explained that experience indicates that any delay over 15 minutes generally does not adversely affect the emergency response. The commenter asked whether and how the NRC will include this draft provision in its inspection procedures.

Another commenter stated that NRC is using an outdated plume model which is inappropriate for coastal or mountainous areas. The commenter suggested that the use of this model affects the accuracy of emergency classification and communication.

A state contact asked what percent of licensees are not making emergency classifications within 15 minutes. The NRC staff stated that they know of two incidents within the past two years where licensees did not make emergency classifications within 15 minutes.

An NEI commenter stated that the draft proposed rule language suggests that licensees must be capable of classifying events within 15 minutes. Therefore, it is not necessary to have an event in order to be subject to an inspection finding.

A state contact supported the draft proposed timeframe for event classification.

Another commenter stated that licensees should be required to actually classify an event within the 15 minute timeframe, rather than just showing the capability to do so.

9. Evacuation Time Estimate Updating

- Staff Summary: The purpose is to establish a frequency for evacuation time estimate (ETE) updates, identify other changes that require ETE update and to establish consistency of ETE review/update across the industry.

- Comments/questions

An NEI Task Force member stated that the industry is in general agreement with the NRC that ETEs should be updated periodically. The commenter asked how NRC decided on the 10 percent estimate in the draft proposed rule language. In addition, the commenter expressed confusion over how to determine when the 10 percent threshold is met. In order to know that infrastructure and demographic information affects the latest submitted ETE by at least 10 percent, the licensee would need to conduct a full analysis. The commenter suggested that the NRC needs to be more specific on the metrics used to establish the frequency and mechanics of this update.

One commenter supported this change and state that it is a very timely amendment to EP regulations.

Another commenter suggested that the assumptions used to develop ETEs are the main issue. The commenter expressed that ETEs are often based on unrealistic assumptions (e.g., non-rush hour traffic). The commenter stated that ETEs should be reviewed by an entity other than the licensee to ensure that they are high-quality and accurate estimates. A state contact suggested that the assumptions licensees use to develop ETEs may be appropriate for local agencies to review. Another commenter indicated that NRC should hold a public meeting to address this issue.

10. Emergency Operations Facility – Performance Based Approach

- Staff Summary: The purpose is to define the conditions under which licensees could establish consolidated emergency operations facilities (EOFs) without prior NRC approval and to outline the functions and capabilities necessary for a consolidated EOF.

- Comments/questions

An NEI representative expressed industry's interest in supporting the development of guidance. The commenter asked if the draft proposed rule language specifically addresses the consolidation of an EOF only, or if there are any new requirements for

near-site facilities. The NRC staff stated that the draft language only applies to consolidated EOFs for multi-site licensees. The staff explained that the draft proposed rule language does not change requirements for existing near site EOFs.

A state contact asked if the distance requirements associated with alternative facilities are related to the distances associated with consolidated EOFs. The commenter suggested that these two issues may be a source of confusion, and NRC staff may need to clarify if and how they are related.

Another commenter asked if the NRC has considered complications involving communication with regard to EOF consolidation. The commenter stated that licensees must have multiple communication capabilities in place, backups available, and links to OROs and other facilities.

A state contact addressed the issue of simultaneous events. The commenter asked if NRC developed criteria to determine how a consolidated EOF should handle simultaneous events.

11. Backup Means for Alert and Notification Systems

- Staff Summary: An alert and notification system provides the capability to promptly alert the populace within the plume exposure pathway emergency planning zone of a nuclear power plant and informs the public of protective actions that need to be taken. The purpose is to ensure the public can be alerted if a problem exists with the primary alert and notification system (ANS).

- Comments/questions

A member of NEI's Task Force stated that federal guidance on ANS has yet to be published, so industry feels a regulatory change is a bit premature. In addition, an NEI representative stated that the requirement for the backup ANS needs to be transparent such that the evaluation criteria used to assess licensees must be published and well-known. Industry is concerned that these criteria will still be under development, post-rule.

A state contact suggested that NRC include the term "identify" in the draft proposed rule language to ensure that licensees have identified and demonstrated that an alternate public notification system is available for use.

Another commenter expressed concern about the lack of progress made on this issue since 2005. The commenter suggested that it is much more expedient for the NRC to require backup power to licensees' existing acoustic warning systems.

Another commenter suggested that the primary acoustic system requirements are inadequate for people indoors or in cars. The commenter stated that licensees and OROs should employ multiple systems to alert the public (e.g., indoor and outdoor acoustic systems, rapid dialing systems, electronic sign boards for people in cars, etc.).

A state contact stated that this requirement is of great importance to his state. In his state, the commenter said licensees were resistant to adding a backup means of ANS because NRC regulations do not require it.

Another state contact suggested that the draft proposed regulatory language should address both primary and backup systems. The commenter stated that the systems need to be redundant and maintained at a comparable level.

Another state contact explained that New York has a wealth of lessons learned regarding backup power to siren systems. The commenter stated that he can share his state's experience with NRC.

An NEI representative suggested that NRC should take a look at the operability of existing systems. The commenter stated that FEMA requires a 90 percent operability standard. The commenter estimated that the existing systems meet 98 percent operability, on average. The commenter, therefore, emphasized the need to weigh the benefits and costs, and backfit considerations.

In response, a commenter stated that the consequences of not alerting the public of an emergency are extremely costly, so the NRC needs to consider both probability and consequences.

Guidance document: NUREG-0654/FEMA-REP-1

Through careful consideration and coordination with FEMA, the staff has determined that the likely path for updating NUREG-0654/FEMA-REP-1 will be to develop a supplement in support of the regulations changes. NRC and FEMA continue to work together to ensure cooperation between onsite and offsite needs.

- Comments/questions

An NEI representative suggested that NRC consider an industry-endorsable guidance document as an alternative vehicle for guidance to the industry.

An NEI representative also stated that the industry needs to have a draft guidance document at the same time that the rule requirements are released for comment. The commenter suggested that these two documents need to converge.

A state contact suggested that the changes to NUREG-0654 should be incorporated into existing guidance documents rather than issued as a stand-alone supplement. A second state contact agreed with this comment.

Other topics:

A commenter suggested that there should be a definitive legal analysis of what is meant by reasonable assurance. The commenter asked why the NRC does not currently define this term. The commenter stated that by not defining reasonable assurance, the term becomes a platitude.

Another commenter asked about other EP issues that are not a part of the draft proposed rulemaking. The commenter asked what the status on these issues is.

NRC provided guidance on how to provide further comments and how to participate during the rulemaking process.

Provide feedback on draft preliminary rule language (Feedback will not be publically addressed by NRC)

- www.regulations.gov

Review documents on the NRC Website

- Rulemaking Plan: ML070440148
- Draft Preliminary Rule Language: ML080910069

Attend public meetings

- Concurrent with proposed rule (2009): 3-4 meetings

**ATTENDEES FOR MEETING TO DISCUSS
EMERGENCY PREPAREDNESS DRAFT PRELIMINARY
RULE LANGUAGE
MARCH 5, 2008**

Name	Organization
Alain Grosjean	Entergy
Amanda Pitello	Massachusetts FEMA
Anthony A. Feltman	TVA
Anthony McMurtray	NRC/NSIR
Barney Simonton	Georgia
Brenda Rippert	Mississippi EMA
Dan Cleavenger	SCE
Dan Hill	West Virginia
Dave Currier	Seabrook Station
Dave Green	Tennessee
Diana Coughlin	Susquehanna PPI
Don Tailleart	NRC/NSIR
Edward J. Weinkam	NMC
EJ Smith	Mississippi
Ernie Moore	South Carolina EMA
Gary Lima	Tennessee EMA
George Tartal	NRC/NRO
Glen Corbin	Texas
Howard Benowitz	NRC/OGC
Jan Farrow	Illinois EMA
Jeff Laughlin	NRC/NSIR
Jenny Weil	McGraw Hill
Johanna Burkey	Washington State
John B. Costello	Dominion
John Baer	Seabrook Station
John Collier	ICF
John Giarusso	Massachusetts FEMA
Julius Green	Mississippi EMA
Kathryn Brock	NRC/NSIR
Keith Kemper	Exelon
Kevin Reyes	FEMA Region IV
Lauren Quiñones	NRC/NRR

Name	Organization
Lisa Gibney	NRC/NSIR
Liv Fields	Georgia
Liz Gorsmen	ICF
Martin Hug	NEI
Marty Vyeniolo	PA Bureau of Radiation
Mary Lampert	Pilgrim Watch
Maureen Zawalick	Diablo Canyon
Mike Case	NRC/NRR
Mike Griffin	MD Dept. Environment
Monica Ray	FPL Energy
Nancy Chapman	Bechtel
Paul Gunter	Beyond Nuclear
Paul Serra	Dominion
Prosanta Chowdhury	NRC/NSIR
Randy Sullivan	NRC/NSIR
Randy Sullivan	NRC/NSIR
Richard Dudley	NRC/NRR
Rick Jevey	NRC/NRR
Rob Jelaskic	West Virginia Homeland Security
Ronald Role	First Energy
Steve Lavie	NRC/NSIR
Steve Payne	North Carolina EMA
Steve Williams	Washington State
Susan Perkins	NEI
Tony Sutton	Westchester Co. EMA
Trish Holahan	NRC/NSIR
Vernon K. Higaki	First Entergy
Veronica Rodriguez	NRC/NRR
Walter Lee	SNC