



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

April 16, 2009

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-09-0007

TITLE: PROPOSED RULE RELATED TO ENHANCEMENTS TO
EMERGENCY PREPAREDNESS REGULATIONS (10 CFR
PART 50) (RIN 3150-A110)

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of April 16, 2009.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, appearing to read "Annette L. Vietti-Cook", is written over a horizontal line.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Klein
Commissioner Jaczko
Commissioner Lyons
Commissioner Svinicki
OGC
EDO
PDR

VOTING SUMMARY - SECY-09-0007

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN	X				X	3/5/09
COMR. JACZKO	X				X	2/26/09
COMR. LYONS	X				X	2/20/09
COMR. SVINICKI	X				X	3/17/09

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on April 16, 2009.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary


FROM: CHAIRMAN KLEIN

SUBJECT: SECY-09-0007- PROPOSED RULE RELATED TO
ENHANCEMENTS TO EMERGENCY
PREPAREDNESS REGULATIONS (10 CFR PART
50) (RIN 3150-AI10)

Approved xx Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached xx None _____



SIGNATURE

3/5/09

DATE

Entered on "STARS" Yes XX No _____

Chairman Klein's Comments on SECY-09-0007

I approve the staff's recommendation to publish, for public comment, the proposed rule to amend certain Emergency Preparedness (EP) requirements in 10 CFR Part 50 that govern domestic licensing of production and utilization facilities, with comments described below.

I applaud the staff's work in drafting the proposed rule. I am especially pleased with the significant involvement of regional NRC staff, industry and public stakeholders, and the staff's efforts to incorporate information gained from that involvement into the proposed rule. I encourage the staff to continue to pursue active involvement in soliciting and addressing additional public comment on the proposed rule.

The proposed change to 10 CFR Part 50, Appendix E, to add a new Section I, requires licensees to provide protection of onsite personnel during a hostile action based event. The staff should ensure that the scope of the term "personnel" in the proposed rule, as well as the statements of consideration, are consistent with Bulletin 2005-02, "Emergency Preparedness and Response Actions for Security-Based Events," to ensure the continued ability of the licensee to safely shutdown the reactor and perform the functions of the onsite emergency plan.

For the proposed change to 10 CFR Part 50, Appendix E, Section IV.F., the staff should ensure that the exercise planning cycle is defined in the regulations, and that the regulations clearly describe what minimum functions should be demonstrated during the course of a planning cycle, as well as for each periodic exercise required in 10 CFR 50.47(b)(14), and each biennial exercise required in 10 CFR 50 Appendix E.IV.F.2.

For the proposed change to 10 CFR Part 50, Appendix E, Section IV.D.3., the staff should clarify the language in the proposed rule to clearly differentiate between the terms "alerting," "warning," and "notification." The staff should also ensure that the new requirement clearly applies to both the ALERTING function and the NOTIFICATION function of the Federal Emergency Management Agency (FEMA) approved Alert and Notification System (ANS).

For the proposed change to 10 CFR Part 50, Appendix E, Section IV.C., I do not agree with the implied requirement that, for certain situations, (such as instances involving time dependent Emergency Action Levels (EALs)) the licensee must declare an emergency event before the associated EAL condition is met. This may be incrementally beneficial in that notifications to offsite authorities may occur a few minutes earlier, but I find no compelling argument to require the licensee to go beyond the criteria established in their NRC approved EAL scheme. The additional burden on the licensee to implement, and NRC inspection staff to verify compliance with, this proposed new requirement does not justify the potential incremental benefit. In NRC guidance for this rule change, staff should explicitly state that if an EAL will be met imminently and cannot be avoided, the NRC would not consider it to be a violation of their emergency plan to declare the event before the EAL is met, and that it would be beneficial to public health and safety to do so (but not required by the regulations). I do strongly agree that it is appropriate to require the licensee to declare the emergency event, based on the approved EAL scheme, Promptly, meaning as soon as possible following a determination that an EAL condition is met, AND also that the declaration should be made within 15 minutes of event conditions being available to the decision maker. These are two distinct new requirements, and they must be clearly differentiated in the proposed rule.

I support the staff's proposal to remove the near-site Emergency Operating Facility (EOF) restrictions. The main purpose of an EOF during an emergency event is to allow clear communication from the affected site to all local as well as federal authorities, and to provide a protected space for emergency response decision making, primarily as it applies to protective action recommendations for the public near the affected site. During an event, the NRC closely

monitors these activities and provides assurance that appropriate actions are being taken for the protection of public health, safety, and the environment. A remote EOF is functionally acceptable, largely due to advances in technology, reliability and diversity in communication equipment, as well as the ability of senior officials to respond rapidly to an emergency event at any of their sites. However, to enable the NRC to continue to provide assurance to local stakeholders that appropriate actions are being taken, a near-site facility must be maintained. Detailed functional requirements must be clearly described in the regulations for the capabilities of this near-site facility. These functional requirements must address the capability of the near-site facility to accommodate the mission needs and interests of an NRC site team, as well as local stakeholders, media, and other federal responders. I would also support making this option available to licensees with as few as one site, as long as the EOF and the near-site facility meet the functional requirements associated with consolidated EOFs.

The proposed rule falls short in explaining how the Evacuation Time Estimate (ETE) will be used by the licensee. However, the need for accurate information on which local officials rely to make protective action decisions is affected by an accurate and up to date ETE. Therefore, I support publishing the proposed rule to add criteria which would require a new ETE be conducted. However, the staff should consider clarifying the rule in the statements of consideration, or in NRC guidance, on how the licensee should utilize the ETE information (such as influencing their protective action recommendations to the appropriate authorities).

New definitions of "emergency planning function" and "decrease in effectiveness," and how they relate to the EP regulations, as well as the conditions that would require NRC pre-approval for Emergency Plan and EAL changes, are not clear in the proposed rule. Staff should ensure that the language in the rule, or in the associated statements of consideration, clearly characterize these terms to ensure the goal of increased regulatory efficiency and effectiveness is achieved, without heavy reliance on associated NRC guidance documents.

I also approve codifying the requirements of NRC Order EA-02-026, "Order for Interim Safeguards and Security Compensatory Measures," dated February 25, 2002, and the actions in Bulletin 2005-02, "Emergency Preparedness and Response Actions for Security-Based Events," dated July 18, 2005. These proposed rule changes are associated with on-shift multiple responsibilities, EALs for hostile action events, emergency response organization augmentation and alternate facilities, and coordination with offsite response organizations. I also approve the removal of completed one-time requirements, as proposed.



Dale E. Klein, Chairman

3/5/09

Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER JACZKO

SUBJECT: SECY-09-0007 – PROPOSED RULE RELATED TO
ENHANCEMENTS TO EMERGENCY PREPAREDNESS
REGULATIONS (10 CFR PART 50) (RIN 3150-A110)

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below Attached X None



SIGNATURE

 02/26 /2009
DATE

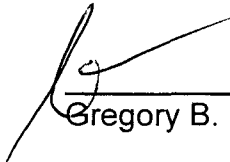
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**COMMISSIONER GREGORY B. JACZKO'S COMMENTS ON SECY-09-0007
PROPOSED RULE RELATED TO ENHANCEMENTS TO EMERGENCY
PREPAREDNESS REGULATIONS**

I approve the staff's request to publish the proposed rule to enhance emergency preparedness regulations for public comment.

The staff did a thorough job of incorporating the proposed changes approved by the Commission on January 8, 2007. In addition, the staff has executed an extensive multi-year outreach effort with stakeholders, which has improved the proposed rule and also strengthened the Agency's relationships with State and local officials and other members of the public.

I am supportive of the rulemaking package as a whole, and am eager to see public comments on several specific areas (such as appropriate implementation dates and the specificity of rule language requirements) before making a final decision on every element contained in the rule. I encourage my colleagues and the staff to get this rule out for that public comment as soon as possible.



Gregory B. Jaczko Date 02/26/2009

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary


FROM: COMMISSIONER LYONS

SUBJECT: SECY-09-0007 – PROPOSED RULE RELATED TO
ENHANCEMENTS TO EMERGENCY PREPAREDNESS
REGULATIONS (10 CFR PART 50) (RIN 3150-AI10)

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below Attached X None


Peter B. Lyons

SIGNATURE

 21 20 /09
DATE

Entered on "STARS" Yes X No

Commissioner Lyons' Comments on SECY 09-0007
Proposed Rule Related to Enhancements to Emergency Preparedness Regulations (10
CFR Part 50) (RIN 3150-A110)

I approve the publication of this proposed rule subject to the edits described below. Additionally, I would like to thank the staff for their efforts to comprehensively review and update the emergency preparedness regulations to incorporate requirements imposed by Commission orders, discussed in bulletin 2005-02, "Emergency Preparedness and Response Actions for Security Based Events," and staff initiated improvements. I would also like to specifically thank those staff members that brought forward concerns about the emergency plan change process.

As I read the proposed revisions, I recognized the significant strides that licensees, state, local and Federal participants have already made towards rising to the new challenge posed by the post 9/11 environment. The incorporation of hostile action based events in this rule will continue to assure a strong level of state, local and Federal participation that will strengthen their ability to respond to radiological events.

Although I was generally impressed with the rulemaking package, I encountered a few instances where I believe the proposed requirements in the rule text were not explicit enough. As we update the requirements we are imposing on licensees, it is the plain language of the rule that will have the first and most significant impact on what is implemented. Therefore, several of the comments I have provided below indicate areas that I believe deserve more specific treatment in the rule. By this statement I am not indicating that our regulations must be overly prescriptive or limit the use of a performance based approach. To the contrary, as much as possible the regulations should provide the desired outcomes and limits so that licensees can develop appropriate methods to achieve the desired results.

Appendix E, section IV – This section should be revised to more clearly articulate the licensee's responsibilities for monitoring population changes. The requirements of this section imply that licensees must revise ETE's if they are aware of population changes outside of the ten year census cycles. However, the rule does not provide any requirement for licensees to monitor the population.

Appendix E, section IV,C. 2. – This section should be revised as follows to assure consistent terminology is used. The third sentence should be revised as shown. "This 15-minute criterion must not be construed as preventing implementation of response actions deemed by the licensee to be necessary to protect public health and safety provided that any delay in ~~classification~~ declaration does not deny the State and local authorities the opportunity to implement measures necessary to protect the public health and safety". Additionally, the statements of consideration should be revised to avoid confusing the use of "classification" and "declaration."

Appendix E, section IV,D.3. – The implementation requirements for this section appear to conflict. The staff should clarify the implementation requirements of this section.

Appendix E, section IV,D.3. – This section requires the licensee to demonstrate that the State or local officials have backup notification methods available if the primary means is unavailable. The staff should revise this section and the supporting SOC to clarify the term unavailability, to provide conditions under which the backup system needs to be capable of operating, and to better define the capabilities of the required backup system.

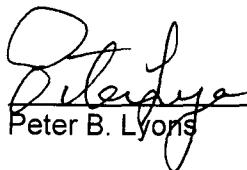
Appendix E, section IV,E.8.b. - This proposed section allows licensees with multiple reactors to consolidate EOF facilities and to establish these consolidated facilities beyond 25 miles from a site. The proposed rule further requires licensees to "make provisions" for locating NRC and other offsite responders closer to the site. Although I support this rule change in principle, the staff should revise Appendix E, section E.8.b, to more specifically document the minimum performance requirements of these facilities.

Appendix E, section IV,E.8.d. - This proposed section specifies facilities and proposed capabilities for use during a hostile action event. The staff should revise Appendix E, section E.8.d, to more accurately reflect the capabilities of this facility, consistent with the capabilities described in the statements of consideration.

Appendix E, section IV,I. - The proposed section I requires a range of protective actions to protect onsite personnel during a hostile action based event. Although I support this concept, the proposed rule and the statements of consideration should be clarified to indicate that this requirement is intended to assure the licensee has sufficient resources following a hostile action based event to recover from the event and to ultimately protect the health and safety of the public. This requirement should not imply that the NRC is regulating worker safety (beyond radiological safety). Although it is likely that actions may and in many cases have already been taken by licensees to protect their workers, requirements for the protection of all site personnel without emphasis on the regulatory goal of ultimately assuring reactor safety could drive behaviors that are contrary to reactor safety and are beyond the NRC's jurisdiction.

10 CFR 50.54(q) - The proposed revision to this section clarifies the change requirements for licensees needing to make changes to their plans. As articulated in the proposed rule I believe the revision will assure that licensees making changes are better able to follow the required process. This process provides appropriate NRC oversight and assures that members of the public are afforded comment and hearing rights ensuring transparency in the implementation of the process. Although I support the proposed revision to this section, I agree with those members of the staff that expressed concerns over not fully understanding the basis for this change. Therefore, the staff should add more detail to the statements of consideration that address the staff concerns related to this section.

Additional minor edits are provided in the attached PDF scan.

 2/20/09
Peter B. Lyons Date

to ensure adequate protection during a hostile action event. Therefore, because the existing regulatory structure ensures adequate protection of the public health and safety and common defense and security, the NRC has determined that, in the current threat environment, the following proposed amendments would not be necessary to ensure adequate protection during a hostile action event. These amendments are considered enhancements to the current EP regulations. However, these enhancements would result in a substantial increase in emergency preparedness and the protection of public health and safety.

1. *On-Shift Multiple Responsibilities*

The NRC is concerned that on-shift ERO personnel who are assigned to emergency plan implementation functions may have multiple responsibilities that would prevent timely performance of their assigned emergency plan tasks. The ~~current~~ requirements for on-shift responsibilities are addressed in § 50.47(b)(2) and Part 50, Appendix E, Section IV.A. ^{Currently,} These regulations do not ^{specifically require} ~~state~~ that on-shift personnel assigned to emergency plan implementation must be able to implement the plan effectively without having competing responsibilities that could prevent them from performing their primary emergency plan tasks. NRC regulations and guidance concerning licensee EROs are general in nature to allow some flexibility in the number of on-shift staff required for response to emergency events. This sometimes has resulted in the inadequate completion of emergency functions required during an emergency event. The NRC issued Information Notice (IN) 91-77, "Shift Staffing at Nuclear Power Plants," dated November 26, 1991, to alert licensees to problems that could arise from insufficient on-shift staff for emergency response. The IN highlighted the following two events:

- A fire at one plant in April 1991 resulted in the licensee's failure to notify some key emergency response personnel (communication function). The need to staff the fire brigade and perform numerous response actions required by the event

Section 50.47(b)(4) currently stipulates that emergency plans must include a standard emergency classification and action level scheme. Part 50, Appendix E, Section IV.B., currently specifies that emergency plans shall include EALs that are to be used as criteria for determining the need for notification of State and local agencies, and participation of those agencies in emergency response. However, ^Scurrent NRC regulations do not require EALs for hostile action events and do not address the issue of anticipatory response to hostile action events. Although Order EA-02-026 and BL-05-02 addressed these issues, those improvements to the EAL requirements to address hostile action events are only in orders and guidance. Thus, the NRC cannot ensure consistent and effective implementation of these enhancements among existing and future licensees. X

Order EA-02-026 required the declaration of at least an Unusual Event in response to a credible hostile action threat. In 2005, the NRC issued BL-05-02, which provided EAL enhancement examples for hostile action events up to the General Emergency level. BL-05-02 provided examples of EALs for all three EAL methodologies that could be implemented immediately without prior NRC approval (i.e., NUREG-0654/FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," NUMARC/NESP-007, "Methodology for Development of Emergency Action Levels," and Nuclear Energy Institute (NEI) 99-01, "Methodology for Development of Emergency Action Levels"). It also pointed out that because of improvements in Federal agencies' information-sharing and assessment capabilities, hostile action emergency declarations can be accomplished in a more anticipatory manner, based on a credible threat, than the current method of making declarations for accidental events. This would enable earlier implementation of emergency response actions.

Although all licensees have implemented both the credible threat EAL required by Order EA-02-026 and the EAL enhancements specified in BL-05-02, there is no requirement to

maintain the enhancements identified in the bulletin. This could result in inconsistent EAL implementation among licensees for response to hostile action events. Also, future licensees would not be required to include these enhancements in their emergency plans. This rulemaking would serve to establish consistent EALs across the nuclear power industry for hostile action events. The ICMs and BL-05-02 provided enhancements to EAL schemes which would allow event declarations to be accomplished in a more anticipatory manner. This is of the utmost importance because EALs are used as criteria for determining the need for notification and participation of State and local agencies. The NRC believes that these enhancements to the EAL requirements addressing hostile action events should be codified by revising Part 50, Appendix E, Section IV.B., as discussed in Section V of this document.

The NRC considered other options to attempt to resolve these issues, such as taking no action or allowing voluntary action by licensees. These options were rejected since there would continue to be no regulatory requirement for current or future licensees to incorporate EALs for hostile action events in their emergency plans, nor would there be a consistent minimum level of implementation that the NRC had determined to be adequate.

3. Emergency Response Organization (ERO) Augmentation and Alternative Facilities

active voice
Currently,
 Licensees are required by current § 50.47(b)(8) and Part 50, Appendix E, Section IV.E. *requires license*
 to have the capability to augment the on-shift staff within a short period of time after the declaration of an emergency to assist in mitigation activities. To accomplish this, ERO members typically staff an onsite Technical Support Center (TSC) which relieves the Control Room (CR) of emergency response duties and allows CR staff to focus on reactor safety. ERO members also staff an onsite Operational Support Center (OSC) to provide an assembly area for damage repair teams. Lastly, ERO members staff an EOF, usually located in close proximity to the plant, to function as the center for evaluation and coordination activities related to the emergency and

the focal point of information provided to Federal, State, and local authorities involved in the response.

GLOBAL COMMENT - PLEASE
SEARCH & REPLACE

However, the current regulations at § 50.47(b)(8) and Part 50, Appendix E, Section IV.E. do not require licensees to identify alternative facilities to support ERO augmentation during hostile action events. During a hostile action event, ERO members would likely not have access to the onsite emergency response facilities, or the EOF if it is located within the licensee's owner-controlled area. Nevertheless these events still warrant timely ERO augmentation so responders can travel quickly to the site.

Keep referring to EROs as "ERPs"

Order EA-02-026 required that licensees assess the adequacy of staffing plans at emergency response facilities during a hostile action event, assuming the unavailability of the onsite TSC, and identify alternative facilities capable of supporting event response. These facilities would function as staging areas for augmentation staff until the site was secured, which would minimize delays in overall site response by permitting ERO assembly without exposing responders to the danger of hostile action. NRC inspections to evaluate the effectiveness of the implementation of the ICMs revealed variations in the identification and staffing of alternative emergency response facilities.

BL-05-02 described how alternative locations for onsite emergency response facilities support EP functions during a hostile action event. It stated that the ERO is expected to be staged in a manner that supports rapid response to limit or mitigate site damage or the potential for an offsite radiological release. It also pointed out that some licensees have chosen not to activate elements of the ERO during a hostile action event until the site was secured. However, the NRC considers it prudent to fully activate ERO members for off-normal working hour hostile action events to promptly staff alternative facilities, in order to minimize delays in overall site response. Even during normal working hours, licensees should consider deployment of onsite ERO personnel to an alternative facility near the site during a hostile action event.

inconsistent implementation among licensees concerning effective coordination with OROs to ensure that adequate resources are available to respond to a hostile action event at a nuclear power plant.

Licensees and the supporting OROs have taken various actions to respond to this issue, but criteria for determining the adequacy of the licensee and ORO actions have not been established. The NRC considered encouraging industry to develop and implement a voluntary program; however, voluntary programs do not provide a consistent, NRC-approved means for addressing the needed enhancements in the post September 11, 2001, threat environment. The NRC believes that a voluntary approach would not ensure consistent industry-wide implementation of the ICM requirements and there would be no requirement for new licensees to incorporate the changes into their emergency plans.

The NRC is proposing to revise Part 50, Appendix E, Section IV.A.7. to require licensees to ensure that ORO personnel assigned emergency plan implementation duties would be available to do so during hostile action events. These proposed changes are discussed in

Section V of this document.

5. Protection for Onsite Personnel

Existing NRC regulations at § 50.47(b)(10) and Appendix E to Part 50 do not currently require specific emergency plan provisions to protect onsite emergency responders, and other onsite personnel, in emergencies resulting from hostile action events at nuclear power plants.

Licensees are required to provide radiological protection for emergency workers and the public in the plume exposure pathway emergency planning zone (EPZ), including actions such as warning of an emergency, providing for evacuation and accountability of individuals, and providing for protective clothing and/or radio-protective drugs. Many of these personnel are required by the site emergency plan that the licensee must follow and maintain. The emergency plan requires responders with specific assignments to be available on-shift 24 hours a day to

The NRC is proposing to revise Appendix E by creating a new Section I. to address this issue, as discussed in Section V of this document.

6. Challenging Drills and Exercises

A basic EP principle is that licensees conduct drills and exercises to develop and maintain key skills of ERO personnel. Drill and exercise programs contribute to the NRC determination of reasonable assurance that licensees can and will implement actions to protect public health and safety in the unlikely event of a radiological emergency. Implementation of the current regulations provides reasonable assurance of adequate protection of public health and safety at every nuclear plant site.

In the unlikely event that a licensee faces a hostile action event, the response organization will encounter challenges that differ significantly from those practiced in long-standing drill and exercise programs because these programs have not included hostile action event scenarios. *I am addressing this issue* The current NRC regulations are general in nature and do not explicitly require licensees to include hostile action event scenarios in drills and exercises, nor do they directly allow the NRC to require specific scenario content. The NRC believes that its regulations should be revised to do so. *X*

Following the terrorist attacks of September 11, 2001, the NRC conducted a review of the EP planning basis in view of the changed threat environment and concluded that the EP planning basis remains valid. The NRC observed licensee performance during hostile-action EP tabletop drills at four sites, a drill at one site, and an exercise at one site, as well as several security FOF exercise evaluations. The NRC also discussed security-based EP issues with licensees and Federal, State, and local EP professionals and advocacy groups and issued BL-05-02 to collect information from licensees on the enhancements to drill and exercise programs to address the hostile action contingency.

Through these efforts, the NRC concluded that although EP measures are designed to address a wide range of events, response to hostile action can present unique challenges not addressed in licensee and ORO drills and exercises, such as:

- Extensive coordination between operations, security, and EP;
- Use of the alternative emergency response facilities for activation of the ERO;
- Execution of initial response actions in a hostile environment (i.e., during simulated hostile action);
- The need to shelter personnel from armed attack or aircraft attack in a manner very different from that used during radiological emergencies;
- Conduct of operations and repair activities when the site conditions prevent normal access due to fire, locked doors, security measures, and areas that have not yet been secured;
- Conduct of operations and repair activities with large areas of the plant damaged or on fire;
- Rescue of and medical attention to significant numbers of personnel; and
- Prioritization of efforts to protect plant equipment or to secure access to plant areas for repairs.

In response to BL-05-02, all nuclear plant licensees stated that they would develop and implement an enhanced drill and exercise program. Program elements are captured in a guidance document developed by NEI, NEI 06-04, Rev. 1, "Conducting a Hostile Action-Based Emergency Response Drill." The NRC endorsed this document for use in a pilot program in RIS 2008-08, "Endorsement of Revision 1 to Nuclear Energy Institute Guidance Document NEI 06-04, 'Conducting a Hostile Action-Based Emergency Response Drill,'" dated March 19, 2008. However, implementation of these enhancements is voluntary, and the NRC cannot require licensees to maintain these enhancements, absent issuance of an order *or a regulation*.

a large release) and events, including security-based events. These scenarios should emphasize the expected interfaces and coordination between key decision-makers based on realistic postulated events. The staff should share experiences of preconditioning or "negative training" with DHS.

As a result of the SRM, a joint NRC/FEMA working group was formed to review the development of emergency planning exercise scenarios. The working group was assigned the task of identifying the NRC and FEMA regulations and guidance that would require revision to enhance exercise scenarios, *and guidance to assist effective implementation of these regulations.* The working group recommended several changes to the FEMA Radiological Emergency Preparedness (REP) Program Manual that comport with proposed changes to NRC regulations to address preconditioning and the incorporation of hostile action exercise scenarios.

FEMA held focus group meetings in several FEMA regions to discuss potential policy changes to the REP Program Manual. The NRC supported these meetings to facilitate questions as they may relate to the EP rulemaking issue of challenging drills and exercises. For example, stakeholders voiced opinions on the requirements for the development and review of exercise scenarios, whether all emergency classification levels (ECLs) must be included in each exercise or if one or more ECLs can be skipped, how radiological release conditions and options could vary, and if a spectrum of scenarios will be varied to create more realistic and challenging exercises. Comments received from the several different focus groups will inform the update to the REP Program Manual. The NRC also considered stakeholder views as they relate to this proposed rule and enhancements to EP guidance, although some comments were received after the deadline to be considered in this proposed rule.

The NRC believes that a regulatory change would be necessary to enhance scenario content to include hostile action scenarios and reduce preconditioning through a wide spectrum of challenges. This change would improve licensee ERO capability to protect public health and

safety under all accident scenarios as well as reverse any trend toward preconditioning.

The NRC also considered not making any change to the regulations, but rejected that option because it would not ensure correction of the issues discussed above. The NRC also discussed the use of voluntary programs and although this option could be successful, the NRC could not require that changes made would be permanent and consistent across all sites.

The NRC is proposing to revise Appendix E, Section IV.F. to address these issues, as discussed in Section V of this document.

B. Non-Security Related Issues

The remaining proposed changes would be new or amended requirements that would result in a substantial increase to public health and safety because they would maintain or strengthen the ability of licensees to effectively implement their emergency plans.

1. Backup Means for Alert and Notification Systems

The ~~current~~ regulations for alert and notification system (ANS) capabilities are found in § 50.47(b)(5) and Part 50, Appendix E, Section IV.D.3. and require licensees to establish the capability to promptly alert and notify the public if there is an emergency event while meeting certain ANS design objectives. ^{currently} Existing NRC regulations do not require backup power for sirens or other backup ANS alerting capabilities when a major portion of the primary alerting means is unavailable. The regulations also do not address backup notification capabilities. If a major portion of a facility's ANS is unavailable and no backup exists, then the public may not be promptly alerted of an event at the facility and the protective actions to be taken, which could affect the public's response to the event.

An ANS provides the capability to promptly alert the populace within the plume exposure

alternatives

both the alert and notification functions. Three variations for addressing this issue in rulemaking were considered. X

alternative

The first variation would add a regulatory requirement for ANS backup power. The most common warning system used at U.S. nuclear power plants is based on sirens that are powered directly, or indirectly through batteries, by an AC power source. As noted previously in this discussion, the loss of power is not the only failure mode that can impact warning systems. X

Causes of past ANS inoperability problems have included the inability to detect siren failures, the inability to activate sirens, the failure to test and maintain personal home alerting devices, the use of telephone call-inhibiting devices, and the failure to provide and maintain distribution lists of tone alert radios. Thus, a regulatory requirement addressing only backup ANS power would not eliminate any of these other failure modes. This approach would prescribe one specific method as a backup means, precluding licensees (or applicants) and offsite officials from considering alternative methods, such as route alerting or newer communications technology, that may be more suitable for certain nuclear power plant sites. In summary, it would address only one of several ANS failure modes (i.e., loss of AC power) for one alerting method (i.e., sirens). It would not address backup methods for other types of alerting devices or any part of the notification process. Therefore, the NRC considered this approach to be unacceptable.

alternative

The second variation would require that the primary ANS be designed so there would be no common single failure mode for the system; therefore, a backup system would not be needed. This approach would ensure that the entire ANS is designed and built to a very high level of reliability. Any equipment necessary for ANS activation and operation (e.g., computers, radio transmitters and radio towers, plus the actual alerting devices and notification means) would have redundant components and power sources as necessary to eliminate any common single failure mode, such as a widespread power outage affecting a siren-based system. X

However, ensuring that all ANS common single failure vulnerabilities have been identified and

adequately addressed would be difficult. Even after extensive analysis and testing of a warning system, a common failure mechanism may not become evident until the system is to be activated for an emergency event. For a siren-based system, several additional sirens (with backup power capabilities) may need to be installed to provide overlapping acoustic coverage in the event clusters of sirens fail and thus may discourage licensees at future nuclear power plant sites from using these systems due to the increased cost for installing additional sirens. This approach may not be applicable to non-electronic primary warning systems based on other methods, such as route alerting. For these reasons, the NRC considered this approach to be unacceptable. Rejecting this approach does not mean that the issue of backup power for warning systems will be left unaddressed. As discussed previously, the House Committee on Appropriations has directed FEMA to require all outdoor warning systems to be operable in the absence of AC power.

alternative
The ~~third variation~~ was selected for rulemaking and would revise Part 50, Appendix E, Section IV.D.3 to require backup measures that would be implemented when the primary means of alerting and notification are unavailable. These proposed changes are discussed in Section V of this document.

2. Emergency Classification Timeliness

In its oversight of licensee EP programs, the NRC has occasionally observed a lack of *a few licensees' slow responses* urgency by *were inappropriately delayed* a few licensees in performing emergency classifications. This situation may be a result of a lack of a specific regulatory timeliness requirement. Emergency classification is the process by which a licensee determines whether an off-normal plant condition warrants declaration as an emergency and, if so, which of the four emergency classes – notice of unusual event, alert, site area emergency, or general emergency – is to be declared.

These classifications are fundamental to the licensee's EP program in that onsite and offsite emergency response activities are implemented in a staged, proportional manner, based upon

be viewed as a grace period in which a licensee could resolve a condition that had already exceeded an EAL threshold to avoid a declaration.

This 15-minute goal was not a regulatory requirement but was rather a guideline for staff evaluation of a licensee's performance in responding to an actual radiological emergency. This goal was subsequently incorporated as a criterion in the industry-proposed and NRC-approved Reactor Oversight Process (ROP) EP Cornerstone performance indicators (PIs). Although the reported classification performance during drills and exercises remains high, there have been a few instances, during actual events, in which classifications were inappropriately delayed. Although these few actual events did not warrant public protective measures, this may not always be the case.

The NRC considered the following options for addressing this regulatory problem. The first option, take no action, was rejected because it would not address the regulatory problem. The second option, continue to rely on the industry's voluntary PI, was rejected because the existence of the PI has not prevented untimely classifications during actual emergencies.

Although these occurrences were associated with Unusual Events or Alerts, the observed weaknesses could also have occurred under different circumstances in which the potential impact to the public could have been greater. The third option, issue regulatory guidance, was rejected because although regulatory guidance is an appropriate mechanism for identifying acceptable means for complying with broadly worded regulatory requirements, there is currently no regulatory requirement, broad or otherwise, that emergency classifications meet any particular timeliness criterion. The NRC believes that the fourth option, an amendment of the regulations, would be the best course of action to ensure that licensees ^{are aware that they are responsible} are able to complete ^{ng} emergency classifications in a timely manner in the event of a radiological emergency.

Placing a classification timeliness criterion into the regulations would clearly establish the NRC's expectations, as well as provide a regulatory framework to consistently enforce these

IV.E.9.c., and IV.E.9.d. Guidance documents, including NUREG-0696, "Functional Criteria for Emergency Response Facilities," and NUREG-0737, "Clarification of TMI Action Plan Requirements," Supplement 1, "Requirements for Emergency Response Capabilities," that provide criteria for establishing and locating emergency response facilities also refer to the EOF as a near-site facility. However, the regulations and guidance do not explicitly define the term "near-site." This regulatory structure has resulted in confusion for licensees with reasonable technical bases for moving or consolidating EOFs that would no longer be considered "near-site" and led to requests for exceptions to NRC guidance and exemptions from NRC regulations to move or consolidate their EOFs.

In addition, neither current regulations nor guidance documents address the capabilities and functional requirements for a consolidated EOF, such as capabilities for handling simultaneous events at two or more sites, or having provisions for the NRC and offsite officials to relocate to a facility nearer the site if they desire. Thus, licensees have been uncertain about when they need to submit requests for exceptions or exemptions, which alternative approaches to existing EOF distance and other facility criteria may be acceptable, and what additional capabilities they need to address for a consolidated EOF. A regulatory mechanism (§ 50.54(q)) is already in place that allows licensees to make changes to their emergency plans without prior Commission approval when certain conditions are met. This mechanism could be applied to consolidation of EOFs if clearer criteria were established. In the absence of clear criteria, several recent licensee requests to consolidate EOFs have been evaluated by the NRC staff and reviewed by the Commission on a case-by-case basis.

Each nuclear power plant site is required to have an EOF where the licensee provides overall management of its resources in response to an emergency and coordinates emergency response activities with Federal, State, local, and tribal agencies. The original EOF siting criteria called for the facility to be located near the nuclear power reactor site and imposed a 20-mile

The NRC has determined that the phrase "maintain in effect" in the current § 50.54(q) is not adequately clear in conveying the NRC expectation that an effective emergency plan also requires maintaining the various capabilities and resources relied on in the plan. The phrase "maintain in effect," as applied to emergency plans in current § 50.54(q), has two senses: the first is that the plans are in force; the second is that the plans can achieve the desired result of providing reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. Accordingly, the NRC is proposing to amend current § 50.54(q) to clarify that the regulatory intent is the latter sense by requiring licensees to follow and "maintain the effectiveness" of their approved emergency plans.

Current ^{reg} § 50.54(q) also provides a process under which a licensee may make changes to its approved emergency plan without prior NRC approval provided the changes would not decrease the effectiveness of the emergency plan as approved and the plan, as modified, would continue to meet applicable regulations. Prior NRC approval is required for any change that could decrease the effectiveness of the emergency plan. The NRC and licensees have experienced significant difficulties in implementing this portion of current § 50.54(q) because the current rule language does not define what constitutes a decrease in effectiveness of an emergency plan nor does it identify the type of changes that would constitute a decrease in effectiveness of the plan. The lack of clear evaluation criteria has resulted in regulatory inefficiencies, such as licensees submitting for review changes that do not rise to the level requiring prior NRC approval and enforcement actions due to licensees failing to submit changes that were later deemed to warrant such a review. A large fraction of the enforcement actions in the EP Cornerstone are attributable to these findings.

The NRC has attempted to resolve this issue through the publication of regulatory guidance. In 1998, the NRC issued EPPOS-4, "Emergency Plan and Implementing Procedure Changes," to provide guidance to NRC inspectors regarding their review of licensees'

meetings involved a roundtable discussion of topics related to the review of EP regulations and guidance. During the second day, the NRC staff and stakeholders addressed the "Discussion of NREP 'Parking Lot' Items" from the April 2005 NREP conference and other stakeholder comments and questions. The NRC requested comments in writing before the August 31-September 1, 2005, meeting and also received comments at the meeting. In addition to comments transcribed from the 2-day public meeting, the NRC accepted written comment submissions until October 31, 2005.

The NRC and FEMA responded to generic comments from the August 31-September 1, 2005, meeting and comments received thereafter in "Summary and Analysis of Comments (Received Between August 31 and October 31, 2005)." Site-specific comments from the public meeting were addressed in "Summary and Analysis of Site-Specific Comments (Received Between August 31 and October 31, 2005)."

The NRC also received comments on the review of the EP regulations and guidance for nuclear power plants at public meetings with stakeholders on May 19, 2006, and July 19, 2006. The May 19, 2006, meeting was transcribed. The NRC staff informed the meeting participants that their comments would be presented to the Commission in a September 2006 SECY paper. These comments were provided to the Commission in an attachment to SECY-06-0200 and, like the stakeholder comments from 2005, were used to inform the staff's recommendations to the Commission in SECY-06-0200.

Not focused
The NRC received three comment letters *X* on the draft preliminary rule language posted for comment on <http://www.regulations.gov> on February 29, 2008. One comment letter was submitted by the State of Pennsylvania, one was submitted by NEI, and one was submitted by the Union of Concerned Scientists on behalf of several NGOs. A detailed discussion of the public comments and the Commission's responses is contained in a separate document (see Section IX, "Availability of Documents," of this document). The NRC also received comments on

change to the emergency plan that results in a reduction of the licensee's capability to perform an emergency planning function in the event of a radiological emergency. The phrase "reduction in effectiveness" would be an evaluation concept that would be used in proposed § 50.54(q) to differentiate between changes that the licensee would be allowed to make without prior NRC approval and those that would require prior NRC approval. A determination that a change may result in a reduction in effectiveness does not imply that the licensee could no longer implement its plan and provide adequate measures for the protection of the public. "Radiological emergency" as used in the proposed § 50.54(q)(1)(iv), would mean any condition that would result in the declaration of any emergency classification level and the implementation of the licensee's emergency plan. A nuclear power reactor licensee evaluating whether a particular emergency plan change would constitute a reduction in effectiveness would be expected to consider the spectrum of accidents addressed in the planning basis described in NUREG-0654.

In making this determination, licensees of non-power reactors and fuel facilities licensed under Part 50 would base their evaluations on the planning bases for their respective facilities.

Current regulations in Parts 50 and 52 require applicants for licenses to develop emergency plans that meet the requirements of Appendix E, and for nuclear power reactors, § 50.47(b), as applicable, during facility licensing. A holder of a license under Part 50 or a combined license under Part 52 after the Commission makes the finding under § 52.103(g) would be required by proposed § 50.54(q)(2) to follow and maintain the effectiveness of its emergency plan, as originally approved. The proposed § 50.54(q)(2) references to Appendix E and § 50.47(b), as applicable, would extend the applicability of these requirements as a condition of the facility license (as does the language in current § 50.54(q)). The NRC would expect licensees to identify conditions and situations which could reduce the effectiveness of its emergency plan, and to take corrective and/or compensatory actions to restore and maintain the

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: SECY-09-0007 – PROPOSED RULE RELATED TO
ENHANCEMENTS TO EMERGENCY PREPAREDNESS
REGULATIONS (10 CFR PART 50) (RIN 3150-AI10)

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached XX None _____



SIGNATURE

03/17/09

DATE

Entered on "STARS" Yes ✓ No _____

Commissioner Svinicki's Comments on SECY-09-0007
Proposed Rule Related to Enhancements to Emergency Preparedness Regulations

I approve the staff's recommendation to publish, for public comment, the proposed rule to amend certain emergency preparedness requirements in 10 CFR Part 50 that govern domestic licensing of production and utilization facilities. I have also attached to this vote minor edits to the proposed Federal Register notice (Enclosure 1), the draft regulatory analysis (Enclosure 2), and the summary and analysis of public comments (Enclosure 5).

Additionally, I would note three areas where, in my opinion, staff will need to exercise thoughtful care in the crafting of final rule language and supporting regulatory guidance. The first item relates to the proposed requirement that licensees revise their evacuation time estimates (ETEs) not only when the decennial census data is available, but anytime a population change of ten percent or greater occurs. It is not immediately obvious to me what "population meters," other indicators, or authoritative data sources licensees are supposed to be monitoring (in the periods between the issuance of the decennial U.S. census data) to trigger this required update. Further clarification on this point will, in my view, be needed.

Second, the statements of consideration note that NRC and licensees have experienced significant difficulties in implementing portions of 10 CFR 50.54(q) because the current rule language does not define what constitutes a decrease in effectiveness of an emergency plan nor does it identify the type of changes that would constitute a decrease in effectiveness of the plan. In fact, staff reports that a large fraction of the enforcement actions in the emergency preparedness cornerstone of the Reactor Oversight Process is attributable to findings that licensees have failed to submit changes that were later deemed to warrant such a review. Moving forward, staff must resolve this ambiguity somewhere -- in the rule, the statements of consideration, or supporting guidance.

Third, I look forward to reviewing any comments received regarding how combined license (COL) and early site permit (ESP) applicants should implement the proposed rule. This would include any impacts to the process and schedule for the applicant to submit and the NRC to review revisions to docketed COL and ESP applications necessary for compliance with the rule revisions, should these requirements become final before the staff's licensing review is complete.

Finally, I appreciated reading the "Concerns of Some Members of the Staff Regarding Proposed Emergency Preparedness Rulemaking" (Enclosure 6) relating to the planned change in the regulatory process for licensee submittal of emergency plan (EP) and emergency action level (EAL) changes that require prior NRC approval pursuant to 10 CFR 50.54(q) and Section IV.B of Appendix E to 10 CFR Part 50. These staff members highlighted the need for clarification on why the submittal process for EP changes and some EAL changes would now require a license amendment when the changes currently are submitted in accordance with 10 CFR 50.4 (i.e., as a report). I agree, and join Commissioner Lyons in supporting a more detailed explanation of this change in the statements of consideration.



Kristine L. Svinicki

03/1709

a. An initial full participation⁵ exercise which tests as much of the licensee, State, and local emergency plans as is reasonably achievable without mandatory public participation shall be conducted for each site at which a power reactor is located. Nuclear power plant licensees shall submit exercise scenarios under § 50.4 for prior NRC review and approval.

* * * * *

(ii) For a combined license issued under part 52 of this chapter, this exercise must be conducted within two years of the scheduled date for initial loading of fuel. If the first full participation exercise is conducted more than one year before the scheduled date for initial loading of fuel, an exercise which tests the licensee's onsite emergency plans must be conducted within one year before the scheduled date for initial loading of fuel. This exercise need not have State or local government participation. If FEMA identifies one or more deficiencies in the state of offsite emergency preparedness as the result of the first full participation exercise, or if the Commission finds that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, the provisions of § 50.54(gg) apply.

(iii) For a combined licensee issued under part 52 of this chapter, if the applicant currently has an operating reactor at the site, an exercise, either full or partial participation⁶, shall be conducted for each subsequent reactor constructed on the site. This exercise may be

5 "Full participation" when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite local and State authorities and licensee personnel physically and actively take part in testing their integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant. "Full participation" includes testing major observable portions of the onsite and offsite emergency plans and mobilization of state, local and licensee personnel and other resources in sufficient numbers to verify the capability to respond to the accident scenario.

6 Partial participation when ~~we~~ used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite authorities shall actively take part in the exercise sufficient to test direction and control functions; i.e., (a) protective action decision

- Review the security and emergency plans to maximize compatibility,
 - Assess the adequacy of staffing plans at emergency response facilities, and for licensees with an onsite emergency operations facility (EOF), identify alternative facilities capable of supporting emergency response,
 - Develop plans, procedures and training regarding notification (including responding employees), activation, and coordination between the site and offsite response organizations (OROs),
 - Conduct a review to ensure that responders are not assigned collateral duties that would prevent effective emergency response, and
- Implement site-specific Emergency Action Levels (EALs) to provide an anticipatory response to a credible threat.

1.2.3 NRC Bulletin 2005-02

The NRC issued Bulletin 2005-02, "Emergency Preparedness and Response Actions for Security-Based Events," to obtain information regarding changes nuclear power reactor licensees made or were planning to make regarding security-based emergency preparedness program capabilities and to evaluate how consistently such changes had been implemented. Specifically, the Bulletin focused on gathering information from licensees on five emergency preparedness topic areas: security-based emergency classification levels and EALs; NRC notifications; onsite protective measures; emergency response organization (ERO) augmentation; and drill and exercise programs.

Nuclear plant licensees all responded that they had implemented, or planned to implement, the types of enhancements outlined in NRC Bulletin 2005-02. Further, the Nuclear Energy Institute (NEI) developed a white paper titled "Enhancements to Emergency Preparedness Programs for Hostile Action," issued May 2005 (revised November 18, 2005). The NRC staff endorsed this guidance in Regulatory Issue Summary (RIS) 2006-12, dated July 19, 2006, as an acceptable implementation methodology for the program enhancements discussed in NRC Bulletin 2005-02. However, these enhancements are voluntary. The NRC currently does not regard these voluntary actions in the licensing basis of the plants.

2. Identification and Preliminary Analysis of Alternative Approaches

Prior to the rulemaking, the NRC staff conducted an extensive review of EP regulations and guidance and developed numerous recommendations. The NRC staff presented the analysis and recommendations to the Commission in SECY-06-0200, "Results of the Review of Emergency Preparedness Regulations and Guidance," dated September 20, 2006. SECY-06-0200 also prioritized the NRC staff's recommendations using specified criteria. The Commission, in a Staff Requirements Memorandum (SRM) dated January 8, 2007, approved a rulemaking effort for the various EP initiatives contained in SECY-06-0200. In SECY-07-0182, "Semi-annual Update on the Status of Emergency Preparedness Activities," the NRC staff committed to first conduct rulemaking on the issues identified as high-priority in SECY-06-0200.

Based on the preliminary analysis described above, the proposed rulemaking would revise 10 CFR 50.47, 50.54, and Appendix E to Part 50 to incorporate a total of 11 regulatory initiatives:

1. Protection of onsite personnel
2. Emergency action levels for hostile action events
3. Hostile action event drills and exercises
4. Evacuation time estimate updating
5. Licensee coordination with offsite response organizations
6. On-shift multiple responsibilities
7. Emergency response organization augmentation and alternative facilities
8. Reduction in effectiveness
9. Emergency classification timeliness
10. Emergency operations facility – performance-based approach
11. Backup means for alert and notification systems

The rulemaking would allow the NRC to achieve enhancements to emergency preparedness at nuclear power plants as well as greater regulatory consistency across licensees.

The alternative to these initiatives is the "no-action alternative." Under the no-action alternative, NRC would not amend the current regulations regarding emergency preparedness at nuclear power plant sites. Licensees would continue to comply with the Commission's Order and voluntary commitments from the generic communications. This option would avoid certain costs that the proposed rule would impose. However, taking no action would not enhance emergency preparedness based on recent experience, would not enhance regulatory efficiency, and, moreover, would present a problem for establishing appropriate emergency preparedness measures for new reactors that did not receive the Commission Order or generic communications.

6. Implementation

This section identifies how and when the proposed action would be implemented, the required NRC actions to ensure implementation, and the impact on NRC resources.

6.1 Schedule

The NRC proposes to make the final rule effective 30 days after its publication in the Federal Register. Licensees would be permitted to defer implementation of the final rule until 180 days after publication of the final rule in the Federal Register, except for the following proposed rule changes: (1) the requirements under proposed 10 CFR 50.54(q), which would become effective 30 days after publication of the final rule in the Federal Register; (2) the requirements under proposed Part 50, Appendix E, Section IV.F.2., which each applicable licensee would be required to implement no later than its first biennial exercise conducted more than one year after the effective date of the final rule; and (3) the requirements under proposed Part 50, Appendix E, Section IV.D.3., which each applicable licensee would be required to implement no later than its first biennial exercise conducted more than one year after the effective date of the final rule.

6.2 Impacts on Other Requirements

As discussed in Section 4.1, affected licensees would experience most of the impact of the revisions to the requirements. Nevertheless, the NRC expects the rulemaking would have a noticeable impact on agency resources, both initially and annually thereafter. The most significant impacts result from NRC's need to complete the rulemaking, and to review and revise guidance documents relating to the following issues:

- Protection of Onsite Personnel
- Emergency Action Levels for Hostile Action Events
- Hostile Action Event Drills
- Evacuation Time Estimate Updating and Exercises
- Licensee Coordination with Offsite Response Organizations
- On-Shift Multiple Responsibilities
- Emergency Response Organization Augmentation and Alternative Facilities
- Reduction in Effectiveness
- Emergency Classification Timeliness
- Emergency Operations Facilities – Performance-Based Approach
- Backup Means for Alert and Notification Systems

that response task. The commenter suggested that these requirements must be expanded to explicitly address a third group of persons – off-duty security force personnel who are likely to be called in to work or report to duty for previously scheduled shift coverage. The commenter stated that such personnel may also be employed by local law enforcement or the National Guard and may be called to duty in such capacities, making them unavailable for work as security force personnel. (UCS1 - 4)

NRC response: The NRC disagrees with the commenter. The NRC requires that licensees maintain an adequate emergency response capability including augmentation of the on-shift emergency response organization (ERO). ERO members who could be called in to respond to a plant emergency must be "on call" and available 24 hours a day with no competing responsibilities. A licensee that does not maintain an adequate response capability is not in compliance with current regulations. The NRC is not aware of any such situation, but would take action upon discovering such a situation. The NRC does not believe there is a need for rulemaking on this issue.

Emergency Classification Timeliness

Comment: One commenter argued that the proposed changes to Appendix E.IV.C related to emergency classification timeliness do not meet the intent of SECY-06-0200. The commenter questioned the NRC staff's justification for these particular changes. The commenter suggested that this proposed regulatory criterion should be deleted from the rulemaking. (NEI1 – 6.1a)

NRC response: The NRC disagrees with the commenter. In Item No. 5 on Page 6 of SECY-06-0200, the NRC staff proposed to revise the EP regulations to add requirements that would clarify the time for making event classifications. The NRC notes that the regulatory enhancements identified in SECY-06-0200 were not limited to those associated with the terrorist events of September 11, 2001. The Federal Register notice for the proposed rule provides the NRC's justification for its proposal to amend Appendix E.IV.C to address emergency classification timeliness.

Comment: One commenter stated that there is no compelling basis for imposing the rule's requirements on timeliness of classification. The NRC identified only one late and one missed event classification. The commenter also stated that a timeliness goal is addressed in NEI 99-02, "Regulatory Assessment Performance Indicator Guideline," and that the NRC should continue to rely on the jointly developed performance indicators (PI), and related criteria in NEI 99-02. The commenter asserted that the industry average PI value of greater than 95% indicates that licensee personnel have a sufficient sense of urgency regarding emergency classification. The commenter also stated that the capability to classify an event is clearly addressed in the reactor oversight process (ROP) EP significance determination process. (NEI1 – 6.1b and NEI1 - 6.1c)

NRC response: The NRC disagrees with the commenter. The EP significance determination process in the NRC Inspection Manual, Manual Chapter 0609, Appendix B, does address a classification timeliness goal for the purposes of determining the significance of an apparent violation regarding timeliness. However, there is no timeliness criterion in regulation that could be cited as a violation for which to determine significance.

exercise demonstration without the need for unrealistic scenario elements. The use of such messages to drive demonstration of offsite protective actions, such as evacuation out to 10 miles, would be allowed in exercises under the proposed rule.

Comment: One commenter stated that requiring a radioactive release for every other hostile action-based exercise contributes to preconditioning. The commenter recommended not requiring a radioactive release for every other hostile action-based exercise. (NEI1 – 1.5)

NRC response: The NRC agrees with the commenter that requiring a radioactive release for every other hostile action exercise would contribute to preconditioning. The proposed rule does not contain such a requirement. The NRC expects to publish for review and comment, in conjunction with the proposed rule, proposed guidance regarding hostile action exercises. Comments on the proposed guidance will be considered by the NRC in the development of the final guidance document.

Comment: One commenter asked if the definition of a “biennial exercise planning cycle” is six years and suggested that an eight-year cycle should be evaluated. (NEI1 – 1.6a)

NRC response: The proposed rule does not specify an exercise planning cycle. This issue is being considered in the development of guidance and comments will be accepted during the review period of the guidance document.

Comment: One commenter questioned the purpose of the proposed requirement that NRC would review exercise scenarios. The commenter stated that scenarios are developed based on consensus between the licensee and its OROs, and are agreed upon by FEMA. The commenter expressed concern that the NRC and FEMA may not be in agreement on scenario extent of play or related technical expectations, delaying the development of supporting exercise documentation. (NEI1 – 1.6b)

NRC response: The NRC disagrees with the commenter. The NRC and FEMA are working in concert to develop consistent guidance. Although a conflict could occur, it is expected that issues will be worked out in a manner to support the exercise schedule.

The NRC proposes to require licensees to submit, for NRC review and approval, exercise scenarios to enable the NRC to ensure licensee exercise scenarios implement the proposed requirements of Appendix E, Section IV.F.2.i and j, including hostile action events and a variety of challenges to reduce preconditioning of respondents.

Comment: One commenter suggested modifying the rule language of Onsite Protective Actions During Hostile Action Events to include requirements to describe specific actions to protect onsite personnel and those offsite personnel that respond onsite during hostile action events. (SPA1 – 6)

NRC response: The NRC disagrees with the commenter. The proposed rule language states in part: “a range of protective actions to protect onsite personnel during hostile action events....” This proposed requirement would include all personnel who are located at the plant site. Any offsite responders who respond onsite would do so at the direction of the Incident Commander in coordination with licensee management onsite. In addition, the proposed rule