

PR 50 and 52
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NUCLEAR ENERGY INSTITUTE

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Mr. Christopher G. Miller
Deputy Director for Emergency Preparedness
Division of Preparedness and Response
Office of Nuclear Security and Incident Response
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Proposed Industry Questions for September 17th NRC Public Meeting on Emergency Preparedness Rulemaking

Project Number: 689

Dear Mr. Miller:

The NRC and FEMA held a series of eleven public meetings between June 2nd and June 23rd to introduce the proposed emergency preparedness rulemaking (*74 Fed. Reg. 23254*), and respond to stakeholder questions regarding the proposed rule and draft guidance.

In a letter to the NRC dated July 21, 2009, NEI requested a follow-up meeting in order to gain additional understanding of the rulemaking areas so as to facilitate development of clear and concise comments concerning the proposed rule and related guidance.

On August 21st a September 17, 2009 (12:30 p.m. – 4:30 p.m. EDT) NRC public meeting was noticed on the NRC website.

In the July 21st letter, NEI stated that an outline of topics and questions would be provided to the NRC in advance of a NRC public meeting. The enclosure to this letter provides those topics and questions.

Template = SECY-067

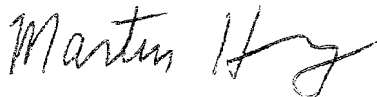
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Mr. Christopher G. Miller
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A copy of this letter and enclosure will be posted on Regulations.gov, NRC Docket ID: NRC-2008-0122 in accordance with the rulemaking process.

Please contact me at (202) 739-8129 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin Hug", with a stylized flourish at the end.

Martin T. Hug

Enclosure

c: NRC Document Control Desk

Emergency Preparedness Rulemaking Proposed Topics and Questions

On-Shift Multiple Responsibilities

The Commission is proposing to amend 10 CFR Part 50, Appendix E, Section IV.A, "Organization," to address concerns regarding the assignment of multiple responsibilities to on-shift emergency response organization (ERO) personnel that potentially would overburden them and prevent the timely performance of their emergency plan functions. Currently, licensees must have enough on-shift staff to perform specified tasks in various functional areas of emergency response. All shifts must have the capability to perform these emergency functions 24 hours a day, 7 days a week, to minimize the impact of radiological emergencies and to provide for the protection of public health and safety.

NRC regulations state that on-shift staffing levels shall be adequate but NRC provides no clear definition of "adequate." NRC believes this results in some variability in how licensees assign emergency plan implementation duties to on-shift personnel. The supporting NRC guidance used for the approval of emergency plans attempts to define the measure of adequacy, but stakeholders have found the guidance to be unclear. NRC believes that the proposed rule would better ensure sufficient on-shift staff in the post-September 11, 2001, threat environment by limiting the assignment of additional responsibilities, which on-shift ERO members would likely perform concurrently with their emergency plan functions.

Questions:

1. What is the expectation for assessing a dual-unit casualty since this condition is not typically included in a Design Basis Accident (DBA) analysis?
2. With respect to the on-shift staffing analysis discussed in ISG section IV.C, Assignment of Multiple Functions to On-Shift Personnel, are the Design Basis Accidents (DBAs) to be analyzed limited to those specified in a site's Final Safety Analysis Report (FSAR), as updated?
3. ISG section IV.C, Assignment of Multiple Functions to On-Shift Personnel, states that staffing analyses are to be performed for Design Basis Accident (DBA) events and Design Basis Threat (DBT) events. The assumed event(s) and analyzed consequences for a DBA are clearly defined in each site's updated FSAR. In contrast, the DBT has a defined initiating event but the consequences are not specified in any analysis. Given the lack of defined consequences, what response elements should be evaluated for the DBT staffing analysis?
4. How should a licensee assess a task defined in NUREG 0654, Table B-1, for which there is no associated performance requirement during a site-specific DBA?
5. In the event of a fire, can it be assumed that Fire Brigade members will be available to perform the NUREG table B1 repair and corrective action function after the fire has been extinguished?
6. Will a licensee submit the completed staffing analyses to the NRC for formal review and approval?
7. What are the expectations associated with maintenance/updating of completed staffing analyses? How would changes be processed?

Licensee Coordination With Offsite Response Organizations During Hostile Action Events

The NRC believes that hostile action events pose a unique challenge at nuclear power plants due to the increased demand on local law enforcement agencies (LLEAs) that are expected to implement portions of ORO emergency plans, as well as respond to provide assistance at the plant. The NRC believes that currently, § 50.47(b)(1) and Appendix E to Part 50 do not explicitly require licensees to coordinate with OROs to ensure that personnel are available to carry out preplanned actions, such as traffic control and route alerting by LLEAs, during a hostile action event directed at the plant.

Questions/Topics:

1. In order to understand the NRC's expectations regarding ORO's, licensees need clarification on whether they must plan for a hostile action event that results in a radiological release.
2. The DHS Comprehensive Review Program conducted reviews at each plant site and the hostile action pilot program drills lead NRC to believe there is inconsistent implementation concerning coordination with ORO's to ensure adequate resources are available to respond to a hostile action event.
 - a. Can NRC provide examples of inadequate resources which are within the licensees control to correct? Are these resources related to equipment or personnel or both?
 - b. During implementation of the hostile action drill program, licensees have coordinated with ORO's in a number of areas. For instance, licensees have approved staging areas for ORO responding resources, provided license representatives for the ICP, ensured radio frequencies are compatible. Is this the type of coordination that the NRC expects under the proposed rule?
 - c. At one of the public meetings on the proposed rule the NRC stated that licensees would not be expected to close the gaps in ORO resource planning identified in by DHS' Comprehensive Review Program. But in the proposed rule the NRC cited gaps in ORO resource planning identified during the DHS Comprehensive Review Program as support for the amendments to Section IV.A.7. 74 Fed. Reg. 23,259. Can the NRC clarify whether the proposed Section IV.A.7 will be implemented to require licensees to address these gaps?
3. With respect to ISG section IV.E, Licensee Coordination with Offsite Response Organizations, the Proposed Guidance section states, "if this issue does not apply to the licensee site, the licensee should document and append the supporting analysis to the site emergency plan." Could you provide an example of where the provisions dealing with offsite response organizations would not apply to the licensee's site? Also, if a licensee appended this analysis to their Emergency Plan and, for some reason, the "issue" was deemed to apply in the future, would update or removal of this appended analysis be considered a reduction in effectiveness of the Emergency Plan?
4. With respect to ISG section IV.E, Licensee Coordination with Offsite Response Organizations, the Proposed Guidance section states, licensees should verify that arrangements for adequate ORO resources remain in effect as part of the annual update of the emergency plan and agreements in accordance with Evaluation Criterion P.4 of NUREG-0654, Section II.P. The criterion P.4 requirement is for "each organization" to "update its plan", not for one organization to verify the response capabilities of another organization. Can you clarify your interpretation of criterion P.4?

5. A State certifies the adequacy of offsite resources in their annual letter of certification to FEMA. What is NRC's basis for the requiring the licensee to also perform this verification when the additional demands placed on ORO resources could be included in the annual letter of certification to FEMA?

Amended Emergency Plan Change Process

Section 50.54(q) requires that licensees follow and maintain in effect emergency plans which meet the requirements of Appendix E and, for nuclear power reactor licensees, the standards of § 50.47(b). Currently, § 50.54(q) also provides a process under which a licensee may make changes to its approved emergency plans without prior NRC approval provided the changes would not decrease the effectiveness of the emergency plans as approved and the plans, as modified, would continue to meet applicable regulations. However, the NRC has determined that the language of § 50.54(q) does not clearly describe the requirements the NRC intended to impose on licensees, leading to confusion and inefficiencies in implementation.

Questions/Topics:

1. What is the purpose and basis for introducing the new term "emergency planning function"? As explained in the proposed rule (74 Fed. Reg. 23271), the emergency planning functions would not replace or supplement the regulations upon which they would be based and as such, compliance with these functions would not be required. Since the regulatory standard for compliance are the planning standards in 10CFR 50.47(b), why isn't the NRC using those standards for the 50.54(q) review?
2. DG-1237 and the proposed rule require the use of the 50.90 process for changes that will result in a "reduction in [the] effectiveness" of emergency plans. This proposed change will increase the regulatory burden on licensees, but the extent of the burden will depend, in part, on how the guidance on "reduction in effectiveness" is implemented. Section C.1.6 ("Role of Licensing Basis") indicates that the basis for existing plan provisions will be vitally important in determining whether a change will result in a reduction in effectiveness. For example, Section C.1.6 states that reductions in staffing may not require prior NRC approval if the staffing levels in the existing plan exceeded the regulatory minimum as a matter of operating philosophy – as opposed requiring excess staff because of special, site-specific circumstances, such as the remoteness of the site. This statement indicates that if margin exists between the "regulatory minimum" and the contents of the emergency plan as a matter of operating philosophy, the licensee may make changes within that margin without prior approval from the NRC. But, at the same time, Section C.3.2 states that "any degradation . . . of [an Emergency Planning Function], would constitute a reduction in effectiveness." Can the NRC clarify whether changes affecting the margin between the "regulatory minimum" and the specific commitments in the emergency plan require prior NRC approval.
3. Section 2 of DG 1237 contains a list of changes that "should be submitted to the NRC for prior review and approval under 10 CFR 50.4, regardless of any licensee evaluation pertaining to a reduction in effectiveness." What is the regulatory basis for this categorical guidance? Since this guidance is categorical (i.e., it recommends submittal of these changes, regardless of the licensee's analysis) isn't it inconsistent with the proposed § 50.54(q)(3), which allows licensees to make changes to emergency plans without prior NRC approval if the licensee can demonstrate (through analysis) that the proposed change will not reduce the effectiveness of

the plan? Also, according to the legal analysis in the supplementary information published with the proposed rule, the NRC's position is that changes to the emergency plan that result in a reduction in effectiveness must be reviewed and approved via the license amendment process. Nonetheless, Section 2 suggests that licensees submit certain changes – which the guidance explains have the “potential to . . . affect the staff’s reasonable assurance findings” – in accordance with § 50.4 (rather than § 50.90). What is the legal distinction between the changes requiring a license amendment (i.e., changes resulting in a reduction in effectiveness) and changes referenced in Section 2, which NRC proposes to that licensees submit for approval under 50.4?

4. The proposed 50.54(q) covers emergency plan changes and all changes to resources, capabilities, and methods. But changes to resources, capabilities, and methods may encompass changes made by other entities, which the licensee does not control. Further, the examples in DG-1237 indicate that 50.54(q) evaluations are required for changes in resources and capabilities outside of the licensee control. Please clarify the NRC’s expectation of licensees in situations where changes are made to resources, capabilities, and methods by entities that are not under the licensee’s control.

Evacuation Time Estimate Updating

Regulations § 50.47(b)(10) and Part 50, Appendix E, Sections II.G., III., and IV. currently require nuclear power plant operating license applicants to provide evacuation time estimates (ETEs) for the public located in the plume exposure pathway EPZ. ETEs are used in the planning process to identify potential challenges to efficient evacuation, such as traffic constraints, and, in the event of an accident, to assist the onsite and offsite emergency response managers in making appropriate decisions regarding the protection of the public. The current regulations do not require any review or revision of ETEs following the initial licensing of the plant and is at the licensee’s discretion to determine when those updates are performed.

NEI Request

NEI will have industry traffic control experts available for the meeting. NEI requests that NRC’s ETE subject matter experts from Scandia, participate in this portion of the WebCast meeting.

Questions/Topics

1. What is the basis of 10% criterion for ETE updates? Sites should be classified according to population density – doesn’t a 10% change have varying effects on ETE depending on the population density within the EPZ?
2. Why does the guidance assume roadways in all nuclear power plant EPZs are operating at or near capacity during an evacuation, (this is not true for most plants in the country)? Why are there inconsistencies with rulemaking language on HCM figure references?
3. What is the basis for the 180-day timeframe for ETE updates? Census data is historically released in stages – when does the 180 day clock begin? Why was staging of ETE updates, with the high population density sites delivering first, medium density second and low density last not considered?
4. Why was no criteria provided to estimate the impact of a staged evacuation? Some sites have little or no population, other than employees at the site, within the two-mile radius.

5. Why does the shadow area include areas within and outside the EPZ? Why wasn't a shadow evacuation percentage of 20% for all areas not within the plume used? Would it be acceptable to vary percentage with higher percentages closer to the plant and lesser percentages in areas farther from the plant, including the proposed shadow area, which spans from the EPZ boundary to a radius of 15 miles from the plant? It is not evident in NUREG/CR-6953, Volume 2 – Focus Groups and Telephone survey – where the 20% value is taken from. What is the basis for 20%.
6. What is the basis for traffic signal timing field data requirement?

Rulemaking Comments

From: Laughlin, Jeff
Sent: Wednesday, September 09, 2009 11:35 AM
To: Rulemaking Comments
Cc: Gallagher, Carol; Tailleart, Don
Subject: Documents for Rulemaking Docket
Attachments: 09-03-09_NRC_Proposed Industry Questions Letter.pdf; 09-03-09_NRC_Proposed Industry Questions Enclosure (2).pdf

Evangeline,

Please enter the attached documents into the Rulemaking Docket. They have been entered in to ADAMS and are in the PARS Library. The accession numbers are:

Letter ML092510424
Enclosure ML092510406

Thanks for your assistance.

Jeff Laughlin

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From: "Laughlin, Jeff" <Jeff.Laughlin@nrc.gov>
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CC: "Gallagher, Carol" <Carol.Gallagher@nrc.gov>, "Tailleart, Don"
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