PR 50 and 52
(74FR23253)

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STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

CHARLIE CRIST
Governor

RUBEN D. ALMAGUER
Interim Director

October 16, 2009

The Honorable Gregory B. Jaczko, Chairman
United States Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2738

Dear Chairman Jaczko:

As we move to keep the Radiological Emergency Preparedness Program at the forefront of preparedness programs, we commend and support the United States Nuclear Regulatory Commission's efforts in working with the Federal Emergency Management Agency to develop Supplement 4 to NUREG-0654 and to revise the Radiological Emergency Preparedness Program Manual. These documents represent the most sweeping changes to the program since its inception and will have implications on the program for years to come.

Due to the scope of the proposed changes, my staff have worked to review the proposed changes and to solicit input from our other state agency, county and private sector partners. The attached comments represent the outcome of those efforts. These recommendations will provide a better foundation for the Radiological Emergency Preparedness Program.

If you have any questions concerning these comments or need additional clarification, please do not hesitate to contact me at 850-413-9969.

Sincerely,

David Halstead, Interim Deputy Director
Florida Division of Emergency Management

DH/my

Attachment: Comments on Enhancements Emergency Preparedness Regulations (Docket ID NRC-2008-0122)

FLORIDA RECOVERY OFFICE • DIVISION HEADQUARTERS • STATE LOGISTICS RESPONSE CENTER
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FR Vol 74, No 94 Reference	Current Language	Issue/Recommendation Basis
Pages 23258-23259 II.A.4 - Licensee Coordination With Offsite Response Organizations During Hostile Action Events and **Page 23274** V. Section-by-Section Analysis Appendix E to Part 50, Emergency Planning and Preparedness for Production and Utilization Facilities	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. Licensees are required to identify ORO support for emergency response as well as demonstrate that various ORO capabilities exist through biennial evaluated exercises. DHS initiated the Comprehensive Review Program that conducted a review of site and ORO response to hostile action at every nuclear plant site. This review often identified a gap in ORO resource planning. Based on these findings and lessons learned from hostile action pilot program drills (see Section II.A.6 of this document), the NRC believes there is 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. --- This new requirement would require licensee coordination with the OROs to ensure that licensees and OROs are able to effectively implement their pre-planned actions for any contingency, including hostile action events as required by Order EA–02–026. This requirement would be enforced through routine inspection and observation of emergency exercises.	Due to the tactical nature of a hostile action event, the assumption that evacuations or movement of special populations will occur on the sole basis of a hostile action may be erroneous. A lesson learned from the hostile action based exercise pilot program is that an ORO may make a decision to shelter the general population in place and/or lock down schools and other critical facilities, due to the possibility of a coordinated hostile action affecting multiple locations including off site. As FEMA is responsible for verifying ORO capabilities through biennial exercises and the annual letter of certification, this requirement may be outside of the purview of the NRC's authority. Validation of this capability for OROs is not appropriate through NRC inspection or the NRC's observation of ORO actions during the biennial exercises. The NRC and FEMA should enhance their coordination to assess this capability through mechanisms already in place. The NRC should be verifying that the licensee is coordinating with the OROs for any contingency. To further single out a hostile action event undermines the all hazards planning approach and comprehensive nature of emergency management. An NPP could be impacted by any number of hazards, including catastrophic scenarios, that require comprehensive emergency planning. OROs already have to plan for hostile action based events (i.e., terrorism) for all critical facilities and other potential targets in their jurisdictions. In a catastrophic event, resources at all levels could potentially be challenged to the point that it may be impossible to ensure dedicated ORO resources are immediately available to respond to any one event much less one at the plant site.

FR Vol 74, No 94 Reference	Current Language	Issue/Recommendation Basis
Pages 23259-23260 II.A.6 – Challenging Drills and Exercises	The NRC regulations addressing this issue 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. Licensees design scenarios in coordination with State and local agencies to demonstrate all key EP functions in a manner that facilitates evaluation. As a result, scenarios have become predictable and may precondition responders to sequential escalation of emergency classifications that always culminate in a large radiological release. Current biennial exercise scenarios do not resemble credible reactor accidents in that the timing is improbable and the intermittent containment failure typically used is unlikely. 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. The NRC is proposing to revise Appendix E, Section IV.F.	Neither the NRC nor FEMA should dictate what scenarios should be demonstrated in an exercise. State and local OROs work with the licensees to develop scenarios that test the responding agencies as appropriate for the unique characteristics of a given site and jurisdiction. However, if the NRC or FEMA desire to see certain capabilities demonstrated by OROs, then these capabilities should be explicitly stated and based on what is likely to be experienced at a NPP. This is a more effective approach than stating general scenario objectives that may or may not impact how OROs respond to an event. In order to demonstrate reasonable assurance that the health and safety of the public can be protected, exercise scenarios must drive ORO play sufficiently to meet their objectives. With most protective actions to protect the public occurring at a general emergency (as that is the classification that offsite consequences are expected), any exercise that does not result in those protective actions being demonstrated would essentially have to now include a table top component to discuss those processes. Based on these new requirements, consideration should be given to extend the exercise cycle from its current six years to at least eight years.

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Page 23286 List of Subjects Appendix E, Section IV, F.2.j	Additionally, in each six calendar year exercise planning cycle, nuclear power plant licensees under this part and Part 52 shall vary the content of scenarios during exercises conducted under paragraph 2 of this section to provide the opportunity for the ERO to demonstrate proficiency in the key skills necessary to respond to the following scenario elements: Hostile action directed at the plant site (at an exercise frequency of at least once every 8 years), no radiological release or an unplanned minimal radiological release that does not require public protective actions, an initial classification of or rapid escalation to a Site Area Emergency or General Emergency, implementation of strategies, procedures, and guidance developed under § 50.54(hh), and integration of offsite resources with onsite response. The licensee shall maintain a record of exercises conducted during each six-year exercise planning cycle that documents the contents of scenarios used to comply with the requirements of this paragraph.	If the overall intent of both the NRC and FEMA is to reduce exercise preconditioning and to provide for varying exercise scenarios, the proposed changes in this criterion do nothing to alleviate either of those concerns. Based on the proposed changes, a typical exercise cycle would include a plume phase exercise (with an ingestion phase component when appropriate), a hostile action based exercise, and a rapidly escalating exercise. Further, in situations with varying or no release options, the exercise remains predictable based on what occurred during the last appropriate scenario. Compression of the proposed scenario elements including the hostile action scenario within the existing 6-year exercise cycle is impractical. Tracking of each scenario element in 3 evaluated exercises creates such predictability and inflexibility that contradicts the intent of the rule of providing challenging drills and exercises. The requirements for licensees to develop, maintain, and implement procedures for notifying appropriate OROs in a timely manner following the receipt of potential aircraft threat notifications in 10 CFR 50.54(hh)(1)(iii) are addressed under NUREG 0654 criterion E.1. The requirements for licensees and OROs to establish procedures for on-site ORO access in 10 CFR 50.54(hh)(1)(vi) are addressed under NUREG 0654 criterion C.6. As 10 CFR 50.54(hh) would already be a component of a hostile action exercise, at a minimum the reference to 10 CFR 50.54(hh) should be deleted from this section.

FR Vol 74, No 94 Reference	Current Language	Issue/Recommendation Basis
(continued)	(continued)	Consideration should be given to removing the requirement that hostile action based drills be conducted for evaluation. There are unique aspects to hostile action based drills, but if conducted as an evaluated exercise component, they may overshadow other important aspects of the exercise. Instead, hostile action based drills should be incorporated into the NRC's triennial Force-on-Force drills as a tabletop component to those exercises. Otherwise, the NRC may be moving into an area that could potentially lead to an evaluation of day-to-day emergency services and tactical law enforcement operations under NUREG 0654 criterion C.6.

FR Vol 74, No 94 Reference	Current Language	Issue/Recommendation Basis
Pages 23264-23265 II.B.4 – Evacuation Time Estimate Updating and **Page 23273** V. Section-by-Section Analysis Appendix E to Part 50, Emergency Planning and Preparedness for Production and Utilization Facilities and **Page 23283** List of Subjects Appendix E, Section IV, Content of Emergency Plans	Although some licensees do revise ETEs based on updated census data, the use of ETEs in evacuation planning is inconsistent and they currently do not affect the development of public protective action strategies. SNL confirmed that the major contributor to changes in ETE is changes in population. Although changes in infrastructure can impact the ETE, population is the more important factor. --- The proposed regulation would require that within 180 days of the issuance of the 2010 decennial census data (expected to be available in 2011), ETE revisions be submitted to the NRC under § 50.4 for review and approval. When the new population, including permanent residents and transient populations, in either the EPZ or most populous ERPA would be less than 90 percent or greater than 110 percent of the population that formed the basis for the currently approved ETE, the licensee or applicant would be required to update the ETE to reflect the impact of this population change.	The statement that ETEs do not affect the development of public protective action strategies is relatively ambiguous as to whether it is directed at licensees or OROs. Review of the data found in ETEs that can be used for development of public protective actions should rest with the OROs. The OROs have the responsibility for implementing protective actions and monitoring any changes in population or roadway capacity. Although population is the major variable to evacuation clearance times, other factors do play a role in evacuation and must not be down played. The ETE becomes just another piece of information to help an informed decision maker make the right decision. The proposed change to the regulation would appear to require licensees to submit a revised ETE 180 days after the decennial census data is available regardless of whether the population has changed +/- 10 percent as required in the proposed rule. Consideration should be given to revising the proposed language to state that licensees should review the decennial census data to determine whether the population has increased sufficiently. The threshold to warrant an update should be based on a 25 percent change in the ETE baseline rather than on a 10 percent change in the EPZ population. Consideration should also be given to changing the metric for population decreases that would require a revised ETE as the planning basis would remain valid and add conservatism. This would also serve to reduce unnecessary work for the licensees.

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(continued)	(continued) The NRC proposes to require licensees and applicants to review changes in the population of the EPZ and the most populous ERPA because population density in an EPZ is generally not homogeneous and EPZ evacuation times are significantly influenced by the ERPA with the largest population. The NRC considered requiring review of all ERPAs or the review of individual counties and States in addition to the whole EPZ. Review of the ERPA with the largest population was considered to be a reasonable balance between the burden on licensees and applicants and the need to ensure that the ETE is accurate because the ERPA with the largest population is generally the one with the most impact on evacuation times. --- Within 180 days of issuance of the decennial census data by the U.S. Census Bureau, nuclear power reactor licensees and license applicants shall develop an ETE and submit it to the NRC for review and approval under § 50.4. During the years between decennial censuses, licensees shall estimate permanent resident population changes at least annually using U.S. Census Bureau data and/or State/local government population estimates. If at any time during the decennial period, the population of either the EPZ or the most populous Emergency Response Planning Area increases or decreases by more than 10 percent from the population that formed the basis for the licensee's currently approved ETE, the ETE must be updated to reflect the impact of that population change.	(continued) In reviewing the ETE, all ERPAs should be reviewed to see the cumulative impacts on the EPZ clearance times. Reviewing a single ERPA on the basis of largest population may not accurately capture population trends. The ERPA with the largest population may also be the most developed with limited potential for further development or increase in traffic capacity. Other ERPAs with lower overall populations may see a larger percentage increase based on new development. Though population change is the key variable in ETEs, population should not be viewed as the sole basis for conducting an ETE. ETEs are not absolute. They are one of many tools available to aid in decision making.

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Page 23268 VI. Specific Request for Comments 1. Inclusion of National Incident Management System/Incident Command System in EP programs.	Not Applicable	As noted in the Federal Register notice, HSPD-5 requires adoption of NIMS by state, local or tribal governments should they seek federal preparedness grants. However, inclusion of NIMS or any component into federal regulations overrides the scope of HSPD-5 and is not appropriate. There are many components required under NIMS that may not be applicable to licensees. As such, it would be inappropriate to require that licensees adopt NIMS. The core concept that licensees should be looking to adopt or implement is an ICS system. In many instances an ICS structure already exists; however, it may not use the ICS terminology. Even then, it should be optional for licensees to implement a NIMS compliant ICS system. As part of its review of licensee emergency preparedness programs, the NRC should include the steps the licensee has taken to ensure that a compatible command structure is in place to coordinate effectively where an ORO interface exists.

FR Vol 74, No 94 Reference	Current Language	Issue/Recommendation Basis
Page 23270 VI. Specific Request for Comments 3. Expanding to non-power reactor licensees a requirement for detailed analyses demonstrating timely performance of emergency response functions by on-shift personnel. 4. Expanding to non-power reactor licensees a requirement for the capability to assess, classify, and declare an emergency condition within 15 minutes and a requirement to promptly declare an emergency condition. 5. Expanding to non-power reactor licensees a requirement for hostile action event EALs. The NRC is proposing that EALs for nuclear power plants must address hostile action events.	Not Applicable	There is currently insufficient information presented by the NRC on which to form a basis of opinion for expanding the three requirements to non-power reactor licensees (research and test reactors). The NRC should present these items under separate proposed rule making and present a thorough analysis for the justification of the proposed rulemaking so that it may be reviewed by the impacted non-power reactor licensees and OROs that may potentially be affected by changes to licensee procedures.

Rulemaking Comments

From: Gallagher, Carol
Sent: Tuesday, October 20, 2009 11:03 AM
To: Rulemaking Comments
Subject: Comment on Enhancements to Emergency Preparedness Regulations
Attachments: NRC-2008-0122-DRAFT-0076[1].1.pdf

Van,

Attached for docketing is a comment letter on the above noted proposed rule (74 FR 23253) from David Halstead that I received via the regulations.gov website on 10/19/09.

Thanks,
Carol

Received: from HQCLSTR01.nrc.gov ([148.184.44.79]) by TWMS01.nrc.gov
([148.184.200.145]) with mapi; Tue, 20 Oct 2009 11:04:11 -0400
Content-Type: application/ms-tnef; name="winmail.dat"
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From: "Gallagher, Carol" <Carol.Gallagher@nrc.gov>
To: Rulemaking Comments <Rulemaking.Comments@nrc.gov>
Date: Tue, 20 Oct 2009 11:03:20 -0400
Subject: Comment on Enhancements to Emergency Preparedness Regulations
Thread-Topic: Comment on Enhancements to Emergency Preparedness Regulations
Thread-Index: AcpRlnZ2kOlBrBdnRNKBaoF9Z5xHAw==
Message-ID: <6F9E3C9DCAB9E448AAA49B8772A448C5B652969E@HQCLSTR01.nrc.gov>
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<6F9E3C9DCAB9E448AAA49B8772A448C5B652969E@HQCLSTR01.nrc.gov>
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