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STARS-09014

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Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications Staff

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**STRATEGIC TEAMING AND RESOURCE SHARING (STARS)
Comments on the Proposed Emergency Preparedness
Rulemaking (NRC-2008-0122; FEMA-2008-0022)**

- References:
- 1) 74 FR 23254, Enhancements to Emergency Preparedness Regulations, dated May 18, 2009
 - 2) 74 FR 23198, Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants; NUREG-0654/FEMA-REP-1/Rev. 1 Supplement 4 and FEMA Radiological Emergency Preparedness Program Manual, dated May 18, 2009
 - 3) 74 FR 23219, NUREG XXXX, Criteria for Development of Evacuation Time Estimate Studies, Draft Report for Comment, dated May 18, 2009
 - 4) 74 FR 23220, Draft Regulatory Guide: Issuance and Availability [DG 1237], dated May 18, 2009
 - 5) 74 FR 23221, Interim Staff Guidance: Emergency Planning for Nuclear Power Plants; Solicitation of Public Comments, dated May 18, 2009

Dear Sir or Madam,

The Strategic Teaming and Resource Sharing (STARS)¹ alliance appreciates this opportunity to submit the attached comments associated with the proposed Emergency-Preparedness rulemaking (Ref. 1) and the associated documents (Ref. 2 through 5). STARS endorses the comments submitted separately by the Nuclear Energy Institute (NEI). Additional STARS-specific comments are provided in the enclosure to this letter.

¹ STARS consists of thirteen plants at seven stations operated by Luminant Power, AmerenUE, Wolf Creek Nuclear Operating Corporation, Pacific Gas and Electric Company, STP Nuclear Operating Company, Arizona Public Service Company, and Southern California Edison.

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Add: S. Lavie (SFL)

Thank you for your consideration of these comments. If there are any questions regarding these comments, please contact me at 620-364-4041, dihooper@wcnoc.com, or Don Rickard, at 573-676-8802, drickard@ameren.com.

Sincerely,



D. Hooper, Acting Chairman
STARS Integrated Regulatory Affairs Group

Enclosure Comments on the Emergency Preparedness Rulemaking

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Enclosure

Comments on the Emergency Preparedness Rulemaking

STARS endorses the comments provided by the Nuclear Energy Institute (NEI). This enclosure provides STARS specific comments on the proposed Emergency Preparedness rulemaking and associated implementation and guidance documents. To facilitate the development, compilation and review, the comments are grouped by subject.

- Attachment 1 – Enhancements to Emergency Preparedness Regulations (74 FR 23254)
- Attachment 2 – Response to Section IV. Specific Request for Comments (74 FR 23268)
- Attachment 3 - Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants; NUREG-0654/FEMA-REP-1/Rev. 1 Supplement 4 and FEMA Radiological Emergency Preparedness Program Manual(74 FR 23198)
- Attachment 4 – NUREG XXXX, Criteria for Development of Eyacuation Time Estimate Studies, Draft Report for Comment (74 FR 23219)
- Attachment 5 - Draft Regulatory Guide: Issuance and Availability [DG 1237] (74 FR 23220)
- Attachment 6 - Interim Staff Guidance: Emergency Planning for Nuclear Power Plants; Solicitation of Public Comments (74 FR 23221)

Attachment 1

Enhancements to Emergency Preparedness Regulations (74 FR 23254)

1. A conforming change to 10 CFR 51.22, "Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review," is needed. As written, it is envisioned that many Emergency Plan changes requiring an amendment per 10 CFR 50.90 would not qualify for the categorical exclusion established in §51.22 because of the specificity of that language. Thus, environmental assessments for changes involving generally administrative changes would be necessitated. This additional burden along with the other negative attributes of the 10 CFR 50.90 license amendment process could further discourage the implementation of beneficial changes involving Emergency Preparedness but otherwise meet a criteria requiring a license amendment to implement. These unintended negative attributes further undermine the Staff's goal of enhancing Emergency Preparedness.
2. STARS endorses the comments submitted by NEI regarding the proposed rule change.

Attachment 2

Response to Section IV. Specific Request for Comments (74 FR 23268)

In addition to the general invitation to submit comments on the proposed rule, the NRC also requested comments on the following questions:

Question 1. Inclusion of National Incident Management System/Incident Command System in EP programs. The NRC is considering the need to integrate the National Incident Management System (NIMS) and more specifically, the Incident Command System (ICS), into licensee EP programs. On February 28, 2003, President Bush issued Homeland Security Presidential Directive 5 (HSPD-5), which directed DHS to develop and administer a NIMS. NIMS/ICS provides a consistent nationwide template to enable all government, private-sector, and NGOs to work together during domestic incidents. HSPD-5 requires Federal departments and agencies to make the adoption of NIMS by State and local organizations a condition for Federal preparedness assistance. Nongovernment entities, such as nuclear power plant licensees, are not required to adopt NIMS. More information about NIMS and ICS may be found at <http://www.fema.gov/emergency/nims/index.shtm>.

The NRC has observed coordination challenges during hostile action drills and observed discussions in some of the focus groups discussing the FEMA REP Program Manual with respect to the use of the ICS between onsite and offsite responders. It is likely that these issues will be addressed through lessons learned in drills and other training, but consistency across all nuclear plant sites may be an issue. The NRC is seeking comments on whether the NRC should issue regulations requiring that licensees train responders and implement the ICS to improve interface with offsite response organizations.

Response:

STARS believes that NIMS and ICS have an appropriate role in the activities of Federal, State and local law enforcement entities; however, NIMS should not be mandated for onsite command and control structure at nuclear power plants.

Question 2. Shift staffing and augmentation. Licensees are required by § 50.47(b)(2) and Appendix E to Part 50 to maintain an ERO comprising both an on-shift emergency organization and an organization capable of augmenting the shift in a timely manner. However, the regulations state that this shift staffing for emergency response must be “adequate” without providing a definition of “adequate” and are silent with regard to what constitutes a timely augmentation. NUREG-0654 defines the measure of adequacy and divides the ERO augmentation into 30-minute and 60-minute responders. However, the guidance is not succinct, resulting in inconsistencies in ERO shift staffing and augmentation strategies among nuclear power reactor licensees.

In SECY-06-0200, the NRC staff identified shift staffing as an area of concern, noting the challenge in evaluating the adequacy of licensee shift staffing because of the lack of clarity

regarding the functional requirements for emergency response. To address this issue, the NRC considered a revision to its regulations to establish functional requirements for the emergency responders instead of focusing on specific emergency responder positions. The NRC also realized that the functional requirements may be dependant upon site- and scenario-specific parameters. Consequently, the NRC attempted to design a performance-based system for identifying shift staffing needs and intended to include it in the development of a broader EP performance-based regulatory regimen. As a result, the shift staffing element was no longer considered in this rulemaking effort.

However, some stakeholders continue to express concern regarding emergency response organization staffing. The NRC recognizes that there is merit in enhancing the regulations to provide clear direction regarding adequate staffing, such as achieving regulatory stability through industry consistency and accommodating technological advancements. Toward that end, the NRC requests comments on whether the NRC should enhance its current regulations to be more explicit in the number of ERO staff necessary for nuclear power plant emergencies. When responding to this question, please consider the following draft staffing table [omitted from this document]. The table provides proposed staff functions and minimum staffing levels for the on-shift and augmenting emergency response organization. The table modifies the original guidance of NUREG-0654, Table B-1 with lessons learned from several years of EP program inspections by the NRC.

Response:

STARS appreciates the Staff's effort to acknowledge that a review of staffing requirements is necessary. However, STARS does not believe that the revised Table B-1 should be adopted without further consideration of a technical basis. STARS desires the opportunity to review and comment on a revised table should it be adopted along with an opportunity to review and comment on the associated technical basis document for the table. Fundamentally, STARS believes that staffing requirements should be established through a site-specific evaluation of the tasks performed and a determination of the resources necessary to accomplish those tasks.

Question 3. Expanding to non-power reactor licensees a requirement for detailed analyses demonstrating timely performance of emergency response functions by on-shift personnel.

The NRC is proposing to require nuclear power reactor licensees to demonstrate through detailed analyses that on-shift personnel can perform all assigned emergency plan implementation functions without having competing responsibilities that could prevent them from performing their emergency plan functions. The NRC is seeking comments on whether it is necessary to add a requirement for non-power reactor licensees (i.e., research and test reactor licensees) to include in their emergency plans detailed analyses demonstrating that on-shift personnel can perform all assigned emergency plan implementation functions in a timely manner without having competing responsibilities that could prevent them from performing their emergency plan functions.

Response:

STARS represents power reactors and takes no position on this question.

Question 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. The NRC proposes to require nuclear power reactor licensees to establish and maintain the capability to assess, classify, and declare an emergency condition within 15 minutes after the availability of indications to plant operators that an EAL has been exceeded, and to also require that an emergency condition be promptly declared as soon as possible following a determination that an EAL has been exceeded. The NRC is considering whether it is necessary to add the emergency declaration timeliness criteria for non-power reactor licensees. The NRC is seeking comments on whether to issue regulations requiring that non-power reactor licensees meet these criteria.

Response:

STARS represents power reactors and takes no position on this question.

Question 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. The proposed rule regarding EALs would not apply to non-power reactors because the EALs for these reactors are generally based on projected or actual offsite dose and not an initiating event. However, hostile action directed toward a non-power reactor is an initiating event that could conceivably cause an offsite dose. The NRC is seeking comments on whether the NRC should issue regulations requiring that non-power reactor licensees include hostile action event EALs in their emergency plans.

Response:

STARS represents power reactors and takes no position on this question.

Question 6. Effective date. As proposed, the effective date of this rule would be 30 days after publication of the final rule in the **Federal Register**, with an option for a licensee or applicant to defer implementation until 180 days after publication of the final rule in the **Federal Register** (with certain exceptions). The NRC is concerned that combined license (COL) and early site permit (ESP) applicants would need to submit timely revisions to docketed applications, to avoid schedule impacts to application reviews, in order to comply with the proposed amendments should they become final before the staff's licensing review is complete. The NRC is seeking comments on how COL and ESP applicants would implement this rule as proposed, including any impacts to the process and schedule for the applicant to submit and the NRC to review those revisions to COL or ESP applications.

Response:

STARS proposes that no implementation period, such as that proposed for the 50.54q change, be less than 90 days based on the necessity to evaluate the changes, make the required procedure changes, provide distribution of the materials and communicate or train on the changes. Further, this time frame would necessarily vary if for some reason the rule took effect during or immediately preceding the fall or spring refuel outage seasons. The option for a deferral period is reasonable. This STARS letter is associated with the operating reactors and does not take or infer a position regarding the COL or ESP applicants.

Question 7. Implementation Schedule. As proposed, each element of the proposed rule would be implemented on a schedule that may vary from approximately 30 days to 3 years. The wide variance in the proposed implementation schedule is a result of the varying degree of difficulty and scheduling problems for some elements including the need for analysis, development of processes, procurement of equipment/facilities, and/or coordination with offsite response organizations. The NRC is concerned that the proposed implementation schedule may not be appropriate for some offsite response organizations and licensees. The NRC is seeking comments regarding the appropriateness of the proposed implementation schedule.

Response:

STARS proposes that no arbitrary upper implementation deadline be set for the reasons stated in the question. STARS proposes that the individual licensees submit and commit to an implementation schedule. That schedule could be built around or include the major functional areas of the rule making. This option would allow licensees to properly evaluate the logistics associated with the implementation of the revised rule requirements. This option allows the licensees the ability to appropriately budget the resources needed for their site specific circumstances. This option also best addresses the perceived challenge in working with the Offsite Response Organizations to effectively implement the rule requirements. The rule language could stipulate the time frame allowed for development of the implementation schedule in much the same manner as that used in recent security rule changes pertaining to cyber security (e.g. 10 CFR 73.54). If this approach were adopted, STARS requests that this period not be less than 180 days.

STARS proposes that no implementation period, such as that proposed for the 50.54q change, be less than 90 days based on the necessity to evaluate the changes, make the required procedure changes, provide distribution of the materials and communicate or train on the changes. Further, this time frame would necessarily vary if for some reason the rule took effect during or immediately preceding the fall or spring refuel outage seasons.

Attachment 3

Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants; NUREG-0654/FEMA-REP-1/Rev. 1 Supplement 4 and FEMA Radiological Emergency Preparedness Program Manual (74 FR 23198)

1. STARS feels that comments are prematurely requested on this document given that the actual proposed rule language is also subject to comment. Given the likelihood that the actual rule language could change, an additional comment period is necessary to evaluate this document's content against the finalized rule language.

Attachment 4

NUREG XXXX, Criteria for Development of Evacuation Time Estimate Studies,
Draft Report for Comment (74 FR 23219)

1. STARS has no specific comments beyond those submitted by NEI on this document.

Attachment 5

Draft Regulatory Guide: Issuance and Availability [DG 1237] (74 FR 23220)

1. STARS feels that comments are prematurely requested on DG 1237 given that the actual proposed rule language is also subject to comment. Given the likelihood that the actual rule language could change, an additional comment period is necessary to evaluate this DG content against the finalized rule language.
2. Section C.2.b – replace “(see 10 CFR 26.4(a)(2) and (c))” with reference to 10 CFR Part 26. The specific paragraphs referenced define the population of individuals subject to Subpart I work hour controls. Part 26.205 imposes the work hour limitations. Based on current implementation issues with the current rule and the existing necessity of further rulemaking involving Subpart I, STARS proposes that this reference be made generic to preclude future conflicts when the rule is revised.
3. Delete all reference to the “emergency planning function.” As explained in the FRN (ref page 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. The presence of this terminology creates a double jeopardy condition for the licensee. If the legal standard for compliance is the planning standards of 10 CFR 50.47(b), then those should be the standards for the 50.54q review.
4. If the “emergency planning function” concept is retained but does not require adherence as discussed in the FRN (ref. page 23271 middle of right column), what will become the basis for violations cited by the NRC? Would they be against the “emergency planning function” or against the “planning standard”? If the licensee argued that compliance with the standard was maintained, would there be a basis for violation if the NRC inspector felt that the “emergency planning function” was not met?
5. Section 1.1 versus the definition of “reduction in effectiveness” and the remainder of the document. What is the threshold for an acceptable licensee change? The examples through the balance of the document present a variety of thresholds. The FRN and Section 1.1 appear to present the threshold at the effective preservation of compliance with the planning standards, i.e., the basis for reasonable assurance determination. Examples in the “emergency planning functions” appear to provide the threshold at a level of “anything less than the standard currently contained in the emergency plan.” The discussion in Section 1.1.c of a “minimal impact” further confuses the issue. The evaluation standard needs to be clear.
6. The use of examples throughout the document is problematic. Although highly illustrative of potential issues, the examples convey a standard of acceptance for making changes that actually varies from one licensee to another. There are numerous additional supporting considerations that would need to be taken into account before determining the acceptability of the examples. The examples would be better served by being

included in an industry guideline equivalent to NEI 96-07 Revision 1 which provides guidance on the implementation of the 10 CFR 50.59 rule.

7. Section 3.5, definition of Emergency Plans, second sentence – this definition is flawed in that there can only be one Emergency Plan. This definition would have multiple historical plans simultaneously in effect. STARS recommends that the second sentence be deleted. The plural plan concept appears to be contradicted by the first sentence of section 3.6.a. The plural “plans” issue is presented in numerous other locations and should be resolved at each location.
8. Sections 3.5.a and b (and elsewhere) – There exist numerous discontinuities in the guidance with respect to the application of “change” (ref. Section 3.6). Part of the time, the text presents a “change” as being the effect the activity has on the physical Emergency Plan document while frequently the text provides examples of changes based on the attribute of the activity and not its effect on the Emergency Plan. STARS strongly suggests that the change be provided in the context of the activity being evaluated. This would apply a concept comparable to the process used in the 10 CFR 50.59 review process.
9. Section 3.6.b – This paragraph should be deleted and relocated to the implementation guidance of Section 5.1. This content is process guidance used to implement the change screening process and should be located in the appropriate portion of Section 5.0, Effectiveness Review Process.
10. Section 3.6.b – STARS recommends that after its relocation to section 5.0, this paragraph should be broken into separate discussions regarding the treatment of recognized degraded/nonconforming conditions versus planned activities such as maintenance. The current paragraph intermingles multiple concepts. For example, a degraded or nonconforming condition would be addressed through the CAP program. The guidance communicated in RIS 2005-20 and Inspection Manual Part 9900, “Technical Guidance related to Operability and Functionality Determinations,” addresses this subject adequately. Clear guidance similar to that in the 50.59 guidance (NEI 96-07 Revision 1) should be established such that the 50.54q evaluation focuses on the change activity and not the degraded condition itself (ref. sentence “The licensee should perform a ...”). Thus, those compensatory actions (sometimes referred to as measures) taken for an interim period to address a degraded or nonconforming condition should virtually always screen out.
11. Regarding implementation of the guidance in this Regulatory Guide, its usage during future inspection activities, the historical practice of approving plan changes using the planning standards of 10 CFR 50.47 and the requirements of 10 CFR 50 Appendix E, what will be the future inspection threshold for determining whether a prior licensee change under 50.54q constitutes a reduction in effectiveness? Clear guidance should be incorporated in this DG and the inspection guidance for inspectors regarding the retroactive application of the new standard. STARS is concerned about the absence of clear regulatory guidance regarding retroactive application of the new Regulatory Guide and is opposed to applying the new standard to historical changes.

12. Section 4.14.b(1), first sentence – This sentence is highly problematic in that when taken literally “the effect of reducing the challenge” prohibits drill variation and undermines the basis for the rulemaking. Drills and exercises should vary in their challenge with some providing more complexity and some providing less complexity. STARS believes that drills and exercises of all challenge levels are necessary to ensure the full capability of the Emergency Response Organization. Footnote 4 recognizes this problem with the language and attempts to correct this condition. This emergency planning function should simply indicate that a variety of challenge levels are required.

Attachment 6

Interim Staff Guidance: Emergency Planning for Nuclear Power Plants;
Solicitation of Public Comments (74 FR 23221)

1. STARS feels that comments are prematurely requested on the proposed Interim Staff Guidance Document NSI/DPR-ISG-01 given that the actual proposed rule language and associated implementation and guidance documents are also subject to comment. Given the likelihood that these documents will change, an additional comment period is necessary to evaluate this document content against the finalized rule language.