

October 23, 2015

EGM 15-003

MEMORANDUM TO: Daniel H. Dorman, Regional Administrator, Region I
Leonard Wert, Acting Regional Administrator, Region II
Cindy Pederson, Regional Administrator, Region III
Marc Dapas, Regional Administrator, Region IV
William M. Dean, Director, Office of Nuclear Reactor Regulation
Glenn M. Tracy, Director, Office of New Reactors
Catherine Haney, Director, Office of Nuclear Material Safety
and Safeguards
Brian Holian, Director, Office of Nuclear Security
and Incident Response

FROM: Patricia K. Holahan, Director */RA/*
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM 15-003,
ENFORCEMENT DISCRETION NOT TO CITE CERTAIN
VIOLATIONS OF SECTION V OF APPENDIX E TO 10 CFR PART 50
FOR NON-SUBMITTAL OF EMERGENCY PLAN AND EMERGENCY
PLAN IMPLEMENTING PROCEDURE CHANGES BY OPERATING
REACTOR LICENSEES, WHILE RULEMAKING CHANGES ARE
BEING DEVELOPED

PURPOSE:

This enforcement guidance memorandum (EGM) grants enforcement discretion for not submitting emergency plan and emergency plan implementing procedure (EPIP) updates solely in accordance with Section V of Appendix E, "Emergency Planning and Preparedness for Production and Utilization Facilities," to Title 10 *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities" (hereinafter Section V).

BACKGROUND:

Currently, Section V requires, in part, that licensees who are authorized to operate a nuclear power facility shall submit any changes to the emergency plan or procedures to the Commission, as specified in 10 CFR 50.4, "Written Communications," within 30 days of such changes. Additionally, Section V requires that license applicants and licensees submit detailed EPIPs no less than 180 days before the issuance of an operating license or license to possess

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nuclear material, or the scheduled date for a combined license under part 52. The requirement to submit the detailed EIPs is not impacted by this EGM.

The original reporting requirement for EIPs was implemented on August 19, 1980 (published in the *Federal Register* (FR), 45 FR 55402), to support a comprehensive evaluation of licensee's emergency preparedness (EP) programs following the accident at the Three Mile Island Nuclear Station.

In SECY-79-450 (ML12236A917), Memorandum to the NRC Commissioners on Licensee Emergency Preparedness, the U.S. Nuclear Regulatory Commission (NRC) staff informed the Commission of its action plan to improve licensee preparedness through an extensive staff review process that would become known as the EP implementation appraisal program. In accordance with this program, EIPs were reviewed to ensure they could adequately support implementation of the emergency plan. Prior to the 1980 rulemaking, EIPs were reviewed on-site under the inspection program to verify their accuracy. The requirement to submit EIP changes, which was incorporated into Section V of Appendix E to 10 CFR 50, was intended to be an interim document collection requirement to support the NRC inspectors' offsite execution of this extensive staff review.

The previously-mentioned requirement in Section V was not implemented with intent to establish or support an EIP approval process. In SECY-79-591 (ML12236B077), Proposed Amendments to 10 CFR Part 50, Section 50.33, Facilities, the NRC staff stated that approval of EIPs should not be a condition of operating license issuance or continuance. The basis for this determination was that no other site-specific procedure is subject to approval as a condition of licensing. As a result of this position, EIPs have never been subject to a formal approval process, and similarly do not impact the NRC's regulatory oversight of licensees.

The emergency plan is the EP basis for licensing and continuance of a license. Commitments that have been incorporated into the EIPs (e.g., emergency action level schemes) and are significant to regulatory oversight are subject to reporting under 10 CFR 50.54(q) and the license amendment process in 10 CFR 50.90. All changes to emergency plans will continue to be reported under these requirements. The reporting requirement in Section V only captures EIP changes that have been determined to be non-substantive (i.e., change that does not result in a reduction in effectiveness). For this reason, the additional reporting requirement in Section V is not necessary.

Therefore, the NRC staff has determined that changes and updates reported solely in accordance with Section V are primarily administrative in nature. In 2013, licensees submitted over 750 EIP changes as a result of this legacy requirement. Currently, the submissions are received and processed, but they are not reviewed or approved. Thus, the Section V submittals impose a significant administrative burden on the licensees and NRC staff that is no longer necessary or practical. Consequently, the NRC staff is exploring options to eliminate this collection requirement through rulemaking at the earliest possible opportunity.

Basis for Granting Enforcement Discretion

The NRC staff has determined that the submittal of emergency plan and EIP changes, based solely on the Section V requirement, has no impact on the NRC's regulatory oversight of

licensees that are authorized to operate nuclear power facilities. In addition, the staff has concluded that any significant changes or updates to a licensee's emergency plan or EIPs will still be reported through the 10 CFR 50.54(q) and license amendment reporting processes. The staff is actively engaged in rulemaking to amend Section V and eliminate the above referenced requirement. Therefore, the NRC staff will use enforcement discretion to not cite licensees authorized to operate a nuclear facility for violations of Section V, specifically those that do not submit changes to their emergency plan and EIPs in accordance with this requirement during the rulemaking process. This discretion does not apply to submittals required under 10 CFR 50.54(q). This enforcement discretion will remain in place until rulemaking (eliminating the Section V language discussed herein) is complete, which will provide final resolution of this issue. Granting of this enforcement discretion does not constitute a change in NRC policy and does not affect public health and safety.

ACTIONS:

Immediate Actions

In accordance with Section 3.5, "Violations Involving Special Circumstances," of the NRC Enforcement Policy, the agency will exercise enforcement discretion and will not cite operating reactor licensees for violations of the requirement in Section V of Appendix E to 10 CFR Part 50, as referenced in this memorandum. Enforcement discretion is appropriate given that this issue does not impact the NRC's regulatory oversight of licensees and does not affect public health and safety.

Violations for which such enforcement discretion is exercised do not require the assignment of an enforcement-action tracking number, documentation in an inspection report or coordination with the Office of Enforcement.

A regulatory information summary (RIS) associated with this EGM will be published to inform licensees of the enforcement discretion detailed herein. The associated RIS will be published as soon as possible following issuance of this memorandum.

Long-Term Actions

This EGM will remain in effect until the NRC completes rulemaking to remove the reporting requirement to submit any change being made to licensees' emergency plans or procedures as stated in Section V of Appendix E to 10 CFR Part 50, as referenced in this memorandum, from the regulations. Once initiated, the status of the rulemaking can be tracked at <http://www.nrc.gov/about-nrc/regulatory/rulemaking.html>.

cc: V. McCree, EDO
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