

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM 20-002 - ATTACHMENT 1, DISPOSITIONING VIOLATIONS OF NRC REQUIREMENTS FOR COMPLETION PERIODICITIES ASSOCIATED WITH SECURITY TRAINING AND REQUALIFICATION REQUIREMENTS DURING THE COVID-19 PUBLIC HEALTH EMERGENCY

Purpose:

The purpose of this attachment is to provide guidance to NRC inspection staff for the disposition of apparent violations of U.S. Nuclear Regulatory Commission (NRC) requirements for security training and requalification during the COVID-19 public health emergency (PHE).

Background:

On March 27, 2009, the Commission published in the Federal Register (74 FR 13925) a final rule titled, "Power Reactor Security Requirements." This rule amended Title 10 of the Code of Federal Regulations (10 CFR) Part 73, including Appendix B, Section VI, "Nuclear Power Reactor Training and Qualification Plan for Personnel Performing Security Program Duties." Appendix B, Section VI, includes specific training and qualification requirements such as Subpart B, "Employment Suitability and Qualification," Subpart C, "Duty Training," Subpart D, "Duty Qualification and Requalification," Subpart E, "Weapons Training," Subpart F, "Weapons Qualification and Requalification Program," and Subpart G, "Weapons, Personal Equipment and Maintenance."

The NRC issued Regulatory Guide (RG) 5.75, "Training and Qualification of Security Personnel at Nuclear Power Reactor Facilities," in July 2009, to provide implementation guidance for the rule.

Discussion:

In response to the COVID-19 PHE, the U.S. Department of Homeland Security (DHS) has designated the commercial nuclear industry a critical infrastructure industry, in part, because of its important role in supplying safe and reliable electrical power to our Nation. Further, the March 28, 2020, "Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response,"¹ issued by DHS, asks both government and businesses to follow recommendations from the Centers for Disease Control and Prevention (CDC), as well as for businesses to enlist strategies to limit the spread of COVID-19. Consistent with this designation and advisory memorandum, the NRC anticipates licensees and other entities will implement social distancing and assembly recommendations to conform to: The President's Coronavirus Guidelines for America,² CDC "Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19),"³ U.S. Department of Labor "Guidance on Preparing Workplaces for COVID-19,"⁴ and any other State and local restrictions, as applicable. Within the Coronavirus Guidelines for America, it states that individuals who work in a critical infrastructure industry, as defined by the DHS, have "a special responsibility to maintain [their] normal work schedule," avoid discretionary travel, and practice good hygiene. Elements of good hygiene include hand washing, social distancing (e.g., sequestration and/or minimizing face-to-face contact within 6 feet), and disinfecting equipment and surfaces.

¹ <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>

² www.coronavirus.gov

³ <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

⁴ Occupational Safety and Health Administration (OSHA) 3990-03. Available at: <https://www.osha.gov/Publications/OSHA3990.pdf>

The NRC staff believes that factors such as the number of licensee staff required to fulfill certain regulatory requirements and the expected proximity of individuals to one another during certain training and requalification requirements will challenge social distancing guidelines and exceed assembly recommendations during the PHE. For example, 10 CFR Part 73, Appendix B, Section VI, (C)(3)(l)(1) states, in part:

“Each member of each shift who is assigned duties and responsibilities required to implement the safeguards contingency plan and licensee protective strategy participates in at least one (1) tactical response drill on a quarterly basis and one (1) force-on-force exercise on an annual basis.”

In order to satisfy this regulatory requirement, licensee security organizations must have the appropriate staff on-site at a singular time and in close proximity to one another, thereby defeating the goal of implementing social distancing associated with COVID-19 PHE. Since the above stated requirement and other security training and requalification requirements would require licensees to assemble personnel in numbers that could exceed the assembly recommendations and challenge social distancing guidance provided by the above Federal and State agencies, the NRC believes it is appropriate for licensees to take actions to limit and minimize staff exposure to the virus during the COVID-19 PHE. These actions may include rescheduling activities to a time outside the nominal training requirement periodicity. Additionally, during this time, it is expected that licensees will apply other methodologies and practices to support the licensee’s security training program. This may include contingency response force readiness training (i.e., conducting individual table tops, reduced staff and individual range activities, individual walkdowns of response locations, discussions of lessons learned from previous exercises, and virtual-based communication exercises) for requalification of security personnel.

The NRC staff is providing guidance to NRC inspection staff for exercising enforcement discretion for those licensees impacted by the COVID-19 PHE. This discretion should be applied to licensees that take prudent and reasonable actions to limit and minimize staff exposure to the COVID-19 virus in an effort to maintain a healthy site work force and to maintain facility safety and security during the PHE. Additionally, it is expected that licensees will have already completed a reasonable amount of COVID-19 PHE preparation regarding staffing levels and scheduling of training activities in a way that minimizes personnel exposure to the COVID-19 virus. Furthermore, licensees should ensure that any disruption in training activities due to the COVID-19 PHE does not negatively impact their ability to implement the physical security plan at the site.

This discretion applies to licensee implementation of the training and requalification requirements for all personnel included in the scope of 10 CFR Part 73, Appendix B, Section VI, Subparts (B), (C), (D), (E), (F) and (G) for training and requalification periodicities. Notwithstanding this EGM, licensees must still ensure that security personnel are trained, equipped, and qualified to perform their assigned duties and responsibilities.

Actions:

Basis for Granting Enforcement Discretion

The NRC staff considers the exercise of enforcement discretion appropriate during the COVID-19 PHE. The discretion is specific to security personnel who have previously demonstrated proficiency and are currently qualified in accordance with 10 CFR Part 73, Appendix B, Section VI, “Nuclear Power Reactor Training and Qualification Plan for Personnel Performing Security Program Duties.” Additionally, because of the rigorous nature of nuclear security personnel

training programs, which consist of regularly scheduled training activities to include weapons training, contingency response drills and exercises, and demonstrated acceptable performance of day-to-day job activities (e.g., detection and assessment, patrols, searches, and defensive operations), the NRC believes that it is reasonable to conclude that security personnel will continue to maintain their proficiency even though the requalification periodicity is temporarily exceeded. Licensees who choose to implement new or revised methodologies or practices to meet regulatory requirements shall ensure that the requirements in 10 CFR 73.55(b), "General performance objective and requirements," continue to be met. As stated above, this enforcement discretion does not apply to initial security personnel training and qualifications.

It is expected that licensees will take reasonable actions to prepare for and limit staff exposure to COVID-19. Conducting training evolutions with multiple personnel may increase the spread of the COVID-19 virus and ultimately have a negative impact on the licensee's ability to staff mission-critical positions necessary to successfully implement its protective strategy at the site.

Additionally, licensees may be challenged during the COVID-19 PHE with the availability of medical staff to conduct physical examinations for security staff recertifications due to competing priorities and public health and safety precautions. The exercise of discretion contemplated in this enforcement guidance memorandum (EGM) for failing to meet the completion periodicities for the requirements outlined in 10 CFR Part 73, Appendix B, Section VI, Subparts (B), (C), (D), (E), (F), and (G) is appropriate, as discussed above, because it provides licensees flexibility in determining how best to utilize their staffing resources to provide reasonable assurance that "activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety" during the COVID-19 PHE, as stated in 10 C.F.R. 73.55(b)(1).⁵

In accordance with the NRC Enforcement Policy, Section 3.5, "Violations Involving Special Circumstances," the NRC may exercise enforcement discretion and not cite licensees for violations of 10 CFR Part 73, Appendix B, Section VI, Subparts (B), (C), (D), (E), (F) and (G) while licensees apply assembly restrictions and social distancing in preparation for and during the COVID-19 PHE.

Enforcement discretion may remain in effect for up to one year after issuance of the EGM to enable licensees sufficient time to resume performing certain training or requalification actions in accordance with the training and requalification requirements specified in 10 CFR Part 73, Appendix B, Section VI, Subparts (B), (C), (D), (E), (F) and (G).

Conditions:

This enforcement discretion is reasonable if the licensee meets the following two conditions:

- a. The licensee has requested an exemption from applicable sections of 10 CFR Part 73, Appendix B, Section VI, Subparts (B), (C), (D), (E), (F) and (G) associated with training and requalification requirement periodicities to allow for assembly restrictions and social distancing before and after the COVID-19 PHE.

⁵ (U) The general performance objective of 10 CFR 73.55(b)(1) is to provide "high assurance." In SRM-SECY-16-0073, the Commission stated that "the concept of 'high assurance' of adequate protection found in our security regulations is equivalent to 'reasonable assurance' when it comes to determining what level of regulation is appropriate" (ADAMS Accession No. ML16279A345).

- b. The licensee must track and document when requalification periodicities have been exceeded.

Immediate Actions:

Enforcement discretion may be granted for those instances when the following two conditions are met:

- (1) To reduce the likelihood of spreading the COVID-19 virus, the licensee has determined that conditions warrant adhering to assembly recommendations and practicing social distancing guidelines through the termination of the COVID-19 PHE by HHS. The licensee must also document this determination, including dates that it implemented assembly restrictions for site personnel.
- (2) The licensee meets the conditions described in the “Conditions” section above.

Violations associated with this enforcement discretion do not require discussion at an enforcement panel; however, they do require assignment of an enforcement action (EA) tracking number and shall be documented in an inspection report. Additionally, the Office of Enforcement and the Office of Nuclear Security and Incident Response have determined that, in general, circumstances that result in the need for enforcement discretion in accordance with this EGM do not constitute a performance deficiency and, therefore, will not result in a finding in the Reactor Oversight Process. When exercising enforcement discretion in accordance with this EGM, the cover letter to the inspection report that discusses the violation should include the following or similar language:

“A violation of 10 CFR Part 73, Appendix B, Section VI, Subparts (B), (C), (D), (E), (F) or (G) [as appropriate] was identified. Because the violation occurred as a result of the COVID-19 PHE described in Enforcement Guidance Memorandum 2020-002 (EGM-20-002) and because the licensee was implementing the conditions specified in the EGM, the NRC is exercising enforcement discretion in accordance with Section 3.5, “Violations Involving Special Circumstances,” of the NRC Enforcement Policy and is not issuing an enforcement action for this violation.”

Long-Term Actions:

The NRC recognizes that impacts on a licensee could continue after the official termination of the PHE. Consequently, the provisions of this EGM may be applied after termination of the PHE to allow, on a case-by-case basis (not to exceed 1 year from the issuance date of the EGM), appropriate consideration of specific circumstances that arise during the inspection cycle following the PHE recovery.

This enforcement discretion guidance will remain in effect until any of the following conditions are met:

- (1) All licensees that are potentially affected by COVID-19 PHE have received NRC approval of licensing actions associated with the training and requalification requirements in the applicable section of 10 CFR Part 73, Appendix B, Section VI, Subparts (B), (C), (D), (E), (F), and/or (G).
- (2) One year has elapsed since the issuance date of this EGM.

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ADAMS: EGM-02-002 Memo: ML20083K794

ADAMS: EGM-20-002 Attachment 1 Memo: ML20091L385

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