

POLICY ISSUE INFORMATION

September 27, 2012

SECY-12-0129

DATE: September 27, 2012

FOR: The Commissioners

FROM: James T. Wiggins, Director
Office of Nuclear Security and Incident Response

SUBJECT: STAKEHOLDER FEEDBACK REGARDING EMERGENCY
PREPAREDNESS RULE IMPLEMENTATION

PURPOSE:

To update the Commission on the impact of changes to the Federal Emergency Management Agency (FEMA) Radiological Emergency Preparedness Program Manual (Program Manual) on the implementation of new emergency preparedness (EP) regulations issued by the U.S. Nuclear Regulatory Commission (NRC) in a final rule on November 23, 2011 (76 FR 72560).

BACKGROUND:

This paper summarizes the staff's analysis of stakeholder feedback regarding implementation challenges faced by NRC licensees following the publication of FEMA's Program Manual on November 23, 2011. Given that off-site EP guidance contained in the FEMA Program Manual directly affects the EP rule implementation activities of the NRC licensees, the Commission, in an August 30, 2011, Staff Requirements Memorandum to SECY-11-0053 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML112420153) directed the staff to evaluate the FEMA Program Manual's potential impacts on implementing the new EP rule.

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DISCUSSION:

The following describes the various venues used by staff to gain insights on possible issues associated with implementing the EP rule:

Five EP final rule implementation forums, jointly conducted by the NRC and FEMA, were held from November 2011, through February 2012, in Rockville, Maryland, and each NRC region. The purpose of these public forums was: to engage with licensees and offsite response organizations to improve their understanding of implementation of the EP final rule and related guidance; to provide expectations for implementation of onsite and offsite EP program changes to address the new regulatory requirements and guidance; to answer questions from licensee and offsite response organization stakeholders regarding implementation of the new rule and guidance; and to provide an opportunity for members of the public to ask questions regarding the EP rule and guidance changes. For these forums, the attendees had different options to participate: attending the forum in person; by telephone; or through web conferencing (for the first and last sessions only). Over 550 people attended the forums, 64 registered for web conferencing, and several more requested access by phone. No significant licensee implementation issues were raised in these meetings.

Individual State and local government workshops on FEMA's Program Manual were conducted by FEMA regional staff from February 2012 through April 2012. NRC staff attended five of these workshops. During a workshop conducted in Grundy County, Illinois on March 20-22, 2012, an issue was raised regarding the LaSalle exercise scheduled for August 1, 2012. In particular, the planned exercise involved a hostile action-based scenario. However, neither LaSalle County, nor the State of Illinois had completed revisions to their response plans to fully incorporate hostile action response elements. As a result, the exercise scenario was changed to reflect a non-hostile action-based scenario.

In March 2012, NRC EP staff and regional staff held a joint meeting with FEMA headquarters and regional radiological EP staff. This was an annual meeting held between the two agencies to coordinate EP activities. During this meeting, staff from each of the respective regions provided updates on stakeholder feedback they had received.

Following the issuance of the FEMA Program Manual, FEMA provided a website for the submission of questions regarding the guidance in the Program Manual. FEMA provided responses to the questions and incorporated changes, as appropriate. The website is similar to the frequently asked questions process that the NRC has for safety, security, and inspections which has received positive feedback from licensees and offsite response organizations (OROs).

During the National Radiological EP Conference, held in April 2012, the NRC and FEMA hosted a joint session for the purpose of receiving feedback from licensees and offsite response organizations on implementation issues. During this session, questions were raised regarding demonstration criteria for OROs during a no-release/minimal-release exercise. Additionally, offsite response organizations and licensees inquired as to the

status of the technical guidance document for the development of backup alert and notification systems (ANS).

During the Nuclear Energy Institute (NEI) EP Forum in June 2012, all attendees were given an opportunity to provide anonymous feedback regarding implementation of the EP rule and FEMA's Program Manual. Feedback received included:

The rule implementation period spans 3 years through December 31, 2015, and, at this point in time, it is too early to tell what the true impacts are, especially unintended consequences of implementation of any of the rule issue areas. It is anticipated that implementation of the "challenging drills and exercises" elements will present the most significant implementation challenges; however, there is no deterministic evidence at this early stage of implementation.

Additionally, licensees noted the overall cumulative impact of the broad spectrum of changes to both their programs and the offsite response organization programs resulting from the publication of the NRC's EP rule and guidance and FEMA's Program Manual.

The NEI EP Working Group provided the NRC with a letter on August 21, 2012 (ADAMS Accession No. ML12243A322) with specific concerns related to the backup ANS requirements, the challenging drills and exercise requirements, and cumulative impacts associated with implementing the new rule. In its letter, NEI indicated that licensees are concerned that FEMA has not issued guidance for the "backup" ANS capability. The NEI letter further states that licensees and OROs do not have the information necessary to ensure that a submitted change to the design report meets FEMA expectations. Therefore, there may be a challenge to meeting the EP rule's deadline of June 24, 2013, to submit revised design reports to FEMA. With regard to challenging drills and exercise requirements, concern remains regarding the lack of clarity in FEMA guidance on demonstration criteria for hostile action-based exercises. This lack of guidance for OROs impacts licensees in their planned interactions with OROs during exercises. The last item of concern pertains to the cumulative impact on resources responsible for the broad spectrum of changes to each licensee's EP program, including coordination with OROs. In addition to EP rule implementation, licensees are also addressing Near Term Task Force Tier 1 actions. Future regulatory actions for Tiers 2 and 3 recommendations may have additional impact.

STAFF ANALYSIS:

Based on the feedback received to date, the staff has determined that implementation of the EP requirements specific to hostile action-based exercises and backup ANS pose the greatest challenge.

As the issues with the LaSalle hostile action-based exercise indicate, OROs need additional guidance to aid them in the development of their emergency plans. At a public meeting held on June 14, 2012 (for which a meeting summary can be found at ADAMS Accession No. ML12172A416), at the NRC Region III office, lessons learned by all stakeholders involved in the LaSalle hostile action-based exercise planning activities were discussed. Following this meeting, FEMA staff issued additional guidance on incorporating hostile action-based elements

into offsite response organization response plans and providing exercise demonstration criteria for hostile action-based exercises. NEI held a hostile action-based Exercise Workshop on September 11-12, 2012, with FEMA and NRC participation. During this workshop, NRC and FEMA staff discussed their respective guidance for hostile action-based exercises. The additional guidance recently developed by FEMA to aid offsite response organizations in developing plans for hostile action-based events should eliminate implementation challenges to licensees regarding the conduct of a hostile action-based exercise by December 31, 2015, which is the deadline established in the EP rule for all applicable licensees to conduct a hostile action-based exercise.

Regarding backup ANS methods, FEMA has developed draft guidance that can be used by licensees to revise their design report; however, this draft guidance is still awaiting formal approval within FEMA. FEMA staff has indicated that licensees can submit design reports that are based on this draft guidance. Thus, licensees should be able to submit their design report to FEMA prior to the implementation date required by the rule.

CONCLUSION:

Based on input from a wide range of sources, the staff has assessed these concerns associated with hostile action-based exercises and backup ANS guidance. Because FEMA is issuing guidance (with the feedback from licensees and OROs), the staff remains confident that the rule will be implemented within the required timeframes.

COORDINATION:

The Office of the General Counsel reviewed this package and has no legal objection.

/RA/

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