

January 14, 2014

MEMORANDUM TO: Those on the Enclosed List

FROM: Robert J. Lewis, Director **/RA/** Scott A. Morris For
Division of Preparedness and Response
Office of Nuclear Security and Incident Response

SUBJECT: EMERGENCY PREPAREDNESS REPORTING REQUIREMENT
TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS*
50.72(b)(3)(xiii)

I am writing to inform you that the Nuclear Energy Institute (NEI) has submitted Revision 0 of NEI 13-01, "Reportable Action Levels for Loss of Emergency Preparedness Capabilities," Agency Wide Documents Access and Management System (ADAMS Accession No. ML13281A765) for endorsement, and to address potential interim use of this guidance by licensees and inspectors prior to formal U.S. Nuclear Regulatory Commission (NRC) endorsement via a future supplement to NUREG-1022, "Event Report Guidelines (10 CFR) 50.72 and 50.73."

NEI undertook this initiative to provide guidance for its member organizations in determining when the unavailability of emergency response structures, systems, and components required reporting to the NRC under Paragraph 50.72(b)(3)(xiii), "Loss of Emergency Preparedness Capabilities," of Title 10 Part 50 of the *Code of Federal Regulations*, "Domestic Licensing of Production and Utilization Facilities" (10 CFR Part 50). NEI 13-01 provides Reportability Action Levels (RALs) similar in format to the emergency action levels. Licensees who opt to use the RAL scheme will need to adapt the generic RALs for their site-specific plant configuration and emergency plan using the guidance in supplied developer notes. This guidance, when formally endorsed, will offer an alternative method to Section 3.2.13, "Loss of Emergency Preparedness Capabilities," of NUREG-1022 for demonstrating compliance with 10 CFR 50.72(b)(3)(xiii).

My staff and representatives of the Division of Inspection and Regional Support in the Office of Nuclear Reactor Regulation considered several drafts of the guidance submitted by NEI and resolved identified concerns. The staff also met with NEI and industry representatives in two public meetings (ADAMS Accession Nos. ML13100A390, ML13109A228). Based upon its review of the final draft, the staff has determined that the submitted document satisfactorily addresses the staff's concerns with the earlier drafts.

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The staff is now developing a supplement to NUREG-1022 that will endorse NEI 13-01 as an acceptable method for complying with 10 CFR 50.72(b)(3)(xiii). We expect that this supplement will be issued for public comment in the first quarter of 2014, and subsequently published later in 2014.

Industry representatives have expressed a desire to use the guidance of NEI 13-01 for informing engineering judgment in making reporting decisions in advance of NRC's formal endorsement. This option is also in the interest of the staff as it may help reverse a significant increase in the number of reports made pursuant to 10 CFR 50.72(b)(3)(xiii), many of which do not appear to meet the threshold of a "significant impairment of the licensee's emergency response capabilities" if an emergency should occur. Accordingly, the staff believes that interim use of NEI 13-01 is generally acceptable for informing the licensee's engineering judgment. However, the NEI document includes guidance that has the effect of deviating from explicit language in NUREG-1022. The enclosure to this memo identifies the deviations of concern. Until the NEI 13-01 document has been formally endorsed, licensees should not base reportability decisions on these deviations.

The staff discussed this interim use protocol in various forums, including the most recent Reactor Oversight Process monthly public meeting on November 20, 2013. I recommend that you provide the information in this memorandum to your inspection staff. If questions arise regarding an event notification under 10 CFR 50.72(b)(3)(xiii), I suggest that the emergency preparedness specialists in your region be contacted for further clarification. My staff in the Inspection and Regulatory Improvements Branch and the contacts listed above are also available for further clarification of NEI 13-01 and its interim use.

Enclosure:

Guidance on Interim Use of NEI 13-01,
"Reportable Action Levels for Loss of
Emergency Preparedness Capabilities"

SUBJECT: EMERGENCY PREPAREDNESS REPORTING REQUIREMENT 10 CFR
50.72(b)(3)(xiii)

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Guidance on Interim Use of NEI 13-01
“Reportable Action Levels for Loss of Emergency Preparedness Capabilities”

The Nuclear Energy Institute (NEI) has submitted Revision 0 of NEI 13-01, “Reportable Action Levels for Loss of Emergency Preparedness Capabilities,” [ML13281A765] for endorsement. This guidance, when formally endorsed, will offer an alternative method to Section 3.2.13, “Loss of Emergency Preparedness Capabilities,” of NUREG-1022 for demonstrating compliance with 10 CFR 50.72(b)(3)(xiii).

Industry representatives have expressed a desire to use the guidance of NEI 13-01 for informing engineering judgment in making reporting decisions, in advance of its formal endorsement. The HQ program offices believe that interim use of NEI 13-01 is generally acceptable for informing the licensee’s engineering judgment.

However, the NEI document includes guidance that has the effect of deviating from explicit language in NUREG-1022. Until the NEI 13-01 document has been formally endorsed, licensees should not base reportability decisions on these deviations. Those aspects of NEI 13-01 that should not be used in making reportability decisions until the NRC formally endorses the document include:¹

1. NEI 13-01, Section 3.1, “Reportable Event – Major Loss of Emergency Assessment Capability” allows a planned outage of emergency response structures, systems, and components of up to 24-hours before a reportability decision is made. Until NEI 13-01 is formally endorsed, the reportability decision should be made prior to the start of the planned outage.
2. Section 3.1 also allows an alternative facility (which is a defined term in NEI 13-01) to be given credit in determining whether an *unplanned* outage of a primary emergency response facility is reportable. Until NEI 13-01 is formally endorsed, credit should not be taken for alternative facilities for unplanned outages. This restriction does not preclude a licensee from considering an alternative facility as a compensatory measure for *planned* outages.
3. NEI 13-01, Section 3.2, “Reportable Event – Major Loss of Offsite Response Capability” allows a licensee to credit the availability of a FEMA-approved backup Alert and Notification System (ANS) in assessing the reportability of a failure or outage of the primary ANS. Until NEI 13-01 is formally endorsed, such credit should not be taken.

The guidance in NEI 13-01 does not supersede the generally applicable guidance in Sections 1, 2, and 4 of NUREG-1022, nor is the guidance to be used for purposes other than reporting decisions. A decision that a particular condition is not reportable has no bearing on the licensee’s need to maintain the effectiveness of its plan as required by 10 CFR 50.54(q)(2) or the need for prior NRC approval of emergency plan changes required by 10 CFR 50.54(q)(4).

¹ The staff has found these deviations to be technically acceptable, but since they involve a change from prior staff positions, their use must be deferred until NEI 13-10 is endorsed. The remaining guidance in NEI 13-01 are not considered deviations, but rather serve to inform engineering judgment regarding a significant impairment of the licensee’s emergency response capability.

The staff is developing a supplement to NUREG-1022 that will endorse NEI 13-01 as an acceptable method for complying with 10 CFR 50.72(b)(3)(xiii). We expect that this supplement will be issued for public comment in the first quarter of 2014, and subsequently published later in 2014.

Industry representatives have expressed a desire to use the guidance of NEI 13-01 for informing engineering judgment in making reporting decisions, in advance of its formal endorsement. This option is also in the interest of the staff as it may help reverse a significant increasing trend of reports pursuant to 10 CFR 50.72(b)(3)(xiii), many of which do not appear to reach the threshold of a significant impairment of the licensee's emergency response capabilities if an emergency should occur. Accordingly, the staff believes that interim use of NEI 13-01 is generally acceptable for informing the licensee's engineering judgment. However, the NEI document includes guidance that has the effect of deviating from explicit language in NUREG-1022. Until the NEI 13-01 document has been formally endorsed, licensees should not base reportability decisions on these deviations. The enclosure to this memo identifies the deviations.

The staff has discussed this interim use protocol in various forums, including the most recent Reactor Oversight Process monthly public meeting on November 20, 2013. I recommend that you provide the information in this memorandum to your inspection staff. If questions arise regarding an event notification under 10 CFR 50.72(b)(3)(xiii), I suggest that the emergency preparedness specialists in your region be contacted for further clarification. My staff in the Inspection and Regulatory Improvements Branch and the contacts listed above are, also available for further clarification of NEI 13-01 and its interim use.

Enclosure:

Guidance on Interim Use of NEI 13-01,
"Reportable Action Levels for Loss of
Emergency Preparedness Capabilities"

DISTRIBUTION: /with enclosure

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ADAMS Accession Numbers: ML13326B029

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Enclosure