

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM 20-002,
DISPOSITIONING VIOLATIONS OF NRC REQUIREMENTS FOR
COMPLIANCE WITH RADIOLOGICAL EMERGENCY RESPONSE
PLANS DURING THE COVID-19 PUBLIC HEALTH EMERGENCY,
ATTACHMENT (3)

Purpose:

The purpose of this attachment is to provide enforcement discretion guidance to U.S. Nuclear Regulatory Commission (NRC) inspection staff for the disposition of violations of emergency preparedness regulations during the Coronavirus Disease 2019 (COVID-19) public health emergency (PHE).¹ The NRC will consider enforcement discretion when it determines that a licensee's use of temporary compensatory actions or contingency plans provided reasonable assurance that the effectiveness of its emergency response readiness was maintained during the COVID-19 PHE.

Background:

Radiological emergency preparedness (REP) emergency plans (EPlans) are applicable to the following types of NRC regulated entities/materials: power reactors, decommissioned reactors, Independent Spent Fuel Storage Installations (ISFSIs), byproduct material, source material, special nuclear material, and Non-Power Production and Utilization Facilities (NPUFs), which include non-power reactors and medical radioisotope irradiation and processing facilities. Therefore, this Enforcement Guidance Memorandum (EGM) is applicable to all the aforementioned programs. Applicable regulations are included in:

- 10 CFR 30.32(i)(1-3),
- 10 CFR 40.31(j)(1-3),
- 10 CFR 50.47(b)(1)-(16),
- 10 CFR 50.54(q),
- 10 CFR 50.54(t),
- 10 CFR 52.79(a)(21),
- 10 CFR 70.22(i)(1-3),
- 10 CFR 72.32(a)(1)-(16), (b)(1)-(16), (c)(1), (c)(2)
- Appendix E to 10 CFR Part 50, Section IV.A-I; note that Section IV.F.2 is not applicable for enforcement discretion using this EGM.

Licensees may experience challenges in meeting certain EPlan requirements during the course of the COVID-19 PHE. The NRC has multiple methods of providing relief from regulatory requirements while continuing to maintain reasonable assurance that adequate protective measures will be taken in the event of a radiological emergency. These methods fall broadly into different categories, which include exemptions from regulatory requirements, license amendments, and relief requests. Each option has specific requirements and is appropriate under certain circumstances. Inspectors should inform licensees to contact their NRC project manager or appropriate point of contact upon identifying any potential compliance issues (with a regulation or site-specific EPlan) resulting from the COVID-19 PHE.

¹ The provisions of this EGM are to be applied to noncompliances that occurred since the Secretary of the United States Department of Health and Human Services declared the COVID-19 PHE on January 31, 2020, and not more than 1 year from the issuance date of this EGM.

The NRC staff, in coordination with Federal Emergency Management Agency (FEMA) staff (as appropriate), is mindful that Offsite Response Organizations (OROs) and licensees are currently responding to the PHE and protecting the health and safety of the public, including their respective staff. Therefore, the NRC, in consultation with FEMA, should be open and flexible with the goal of minimizing undue burden or hardship on the affected communities, and should be cognizant of Federal, State, and local public health directives that have been issued in response to the PHE.

Discussion:

In response to the COVID-19 PHE, the U.S. Department of Homeland Security (DHS) has designated the commercial nuclear industry as 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,"² 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 Federal, State and local restrictions, as applicable.

The NRC staff is cognizant that a licensee's actions to mitigate the PHE may create challenges to comply with certain emergency preparedness requirements. Under certain circumstances, licensees may implement compensatory measures or contingency plans. Examples of these circumstances include, but are not limited to, the following:

- the burden of implementing COVID-19 PHE guidelines for limiting contact and maintaining social distancing may result in a licensee's implementation of a contingency plan to staff an Emergency Response Facility (ERF), including alternate ERFs, should a declared radiological event occur.
- COVID-19 PHE concerns with limiting unnecessary burdening of local hospitals may cause a licensee to consider temporary alternatives to its 'normal' method of performing an inventory of REP equipment maintained at the hospital in order to limit face-to-face interactions and to limit distracting the local hospital from their efforts in responding to the PHE.
- the burden of coordination between licensees and offsite response organizations (ORO) for conducting emergency preparedness readiness activities (e.g., drills/exercises (not biennial exercises), annual EPlan review, ORO communication checks, inventory checks, dissemination of annual public information brochures/calendars, media training and public information campaigns) may be temporarily altered due to following COVID-19 PHE guidelines for limiting contact and maintaining social distancing.

Enforcement discretion guidance is being provided for noncompliances with emergency preparedness requirements that were precipitated by the COVID-19 PHE. During the PHE, a licensee may implement temporary compensatory measures for the purposes of enhancing its ability to meet Federal, State, and local guidelines for limiting the spread of COVID-19, as well as to reduce the burden on offsite response organizations during the PHE. Discretion should be granted to a licensee that takes prudent actions to ensure that its emergency response readiness would be effectively maintained throughout the COVID-19 PHE.

² <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>

Actions:

Basis for Granting Enforcement Discretion

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 NRC requirements when application of the normal process is not appropriate given the circumstances. The NRC staff considers the exercise of this enforcement discretion appropriate during the COVID-19 PHE since compliance with local, State, and Federal PHE guidelines may cause licensees to develop and implement compensatory measures or contingency plans to ensure that their emergency response readiness continues to be effectively maintained (i.e., onsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency). All temporary compensatory measures or contingency plans will be documented and communicated such that the emergency response organization (ERO) and OROs are aware of the intended plan(s) for declared radiological events during the PHE. Documentation should be in sufficient detail to support the licensee's determination of its capability to respond to radiological emergencies during the PHE. It is also expected that licensees will ensure that the applicable EP staff at the specific NRC region, the NRR or NMSS project manager, or the NPUF program manager, will be kept informed of these temporary compensatory measures and/or contingency plans.

The following checklist may be used by inspectors to ensure consistent and effective documentation for each compensatory measure or contingency plan developed and/or implemented during the PHE:

- The specific EPlan requirement, which could not be implemented as written, was documented.
- An effective compensatory measure or contingency plan was developed in consultation with OROs (as applicable).
- A documented evaluation concluded that emergency response readiness would be effectively maintained during the PHE.
- The proposed, or planned, date for restoring compliance with the specific EPlan requirement was documented.

Conditions:

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

- a. The licensee's implementation of compensatory measures and/or contingency plans occurred after the declaration of the COVID-19 PHE by the U.S. Department of Health and Human Services on January 31, 2020.
- b. The licensee's temporary actions ensured that its emergency response readiness would be effectively maintained during the COVID-19 PHE.
- c. Prior to implementation, all compensatory measures and/or contingency plans are effectively evaluated, documented, and communicated to all applicable licensee staff, ERO staff, and OROs.

- d. Within 30 days of implementation, all compensatory measures and/or contingency plans are communicated to applicable NRC inspection staff.

Enforcement Discretion:

Enforcement discretion may be exercised for noncompliances of emergency preparedness requirements if the conditions described above are met.

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 (OE) and the Office of Nuclear Security and Incident Response (NSIR) have determined that, in general, circumstances that result in the need for this EGM do not constitute a performance deficiency and, therefore, will not result in a finding in the Reactor Oversight Process, Reactor Decommissioning Inspection Program, or ISFSI Inspection Program. 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 [insert specific regulation] 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 met the conditions specified in this EGM, Attachment (3), 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 1 year has elapsed since the issuance date of this EGM

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ADAMS: EGM-20-002 Memo: ML20083K794

ADAMS: EGM-20-002 Attachment 3 Memo: ML20143A066

* Via Email

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