

Repository Operations Area,” Subsection (e)(10), which requires an analysis that includes “\* \* \* means to control radioactive waste and radioactive effluents, and permit prompt termination of operations and evacuation of personnel during an emergency \* \* \*.”

No changes were made to the Yucca Mountain Review Plan as a result of this comment.

*Issue 22:* Would emergency response capability to respond to potential radiological accidents at a high-level waste repository at Yucca Mountain be adequate?

*Comment.* One commenter expressed several concerns regarding emergency response planning including: (i) Whether local emergency response personnel would have to be mobilized to respond to radioactive waste spills; (ii) whether NRC intends to fund the purchase of equipment necessary to neutralize the effects of a radiation spill; (iii) whether NRC will educate the public on self-protection during radiation emergencies; and (iv) whether drills would be conducted for evacuation of a large population threatened by radiation exposure.

*Response.* The Commission addressed issues related to emergency preparedness and response in its “Statement of Considerations” for 10 CFR part 63 (66 FR 55745–55746, November 2, 2001) as follows:

Part 63 (Subpart I) requires DOE to submit an emergency plan for coping with radiological accidents. NRC’s review of DOE’s emergency plan will evaluate the adequacy of the plan including such things as the capability to respond to accidents and medical assistance for treatment of radiological injuries. Where DOE’s emergency plan is found to be inadequate, NRC, if necessary, can impose license conditions that require DOE to correct any deficiencies. \* \* \*

Additionally, U.S. Federal Emergency Management Agency (FEMA) regulations, as well as DOE orders, require that DOE have an emergency response capability that is adequate to meet anticipated accidents, including potential radiological accidents. DOE is responsible for ensuring that the emergency treatment capability exists and is documented in its emergency plan, which is subject to NRC review in accordance with Section 63.161.

In response to a comment regarding the required scope of emergency plans the Commission stated (66 FR 55746, November 2, 2001):

The rule requires DOE to have plans to cope with radiological accidents (emergency planning at section 63.161) and provide for physical protection (Section 63.21(b)(3)). These plans are required to address a number of criteria to ensure that DOE is prepared to

respond, both on site and off site, to accidents, and that DOE has the capability to detect and respond to unauthorized access and activities that could threaten the physical protection of high-level waste. As noted \* \* \*, NRC and [U.S. Federal Emergency Management Agency] regulations, as well as DOE orders, require that DOE have adequate plans and procedures in place to address any potential accidents and incidents. DOE’s emergency plan and physical protection plan are subject to NRC review. The Commission believes that the requirements for DOE’s plans for emergencies and physical protection expressed in the proposed Part 63 are appropriate and has retained them in the final rule. In light of the terrorist attacks of September 11, 2001, the Commission has directed the staff to conduct a comprehensive reevaluation of NRC physical security requirements. If this effort indicates that NRC’s regulations or requirements warrant revision, such changes would occur through a public rulemaking or other appropriate methods.

Section 63.161 requires DOE to develop an emergency plan based on the criteria of Section 72.32 (*i.e.*, criteria provided for an Emergency Plan for an Independent Spent Fuel Storage Installation (ISFSI)). The required Emergency Plan includes: Identification of each type of accident; description of the means of mitigating the consequences of each type of accident; prompt notification of offsite response organizations; and adequate methods, systems, and equipment for assessing and monitoring actual or potential consequences of a radiological emergency condition. If particular types of accidents require evacuation procedures to ensure the protection of public health and safety, they will be included in the Emergency Plan.

Section 63.21(b)(3) requires DOE to submit a detailed plan to provide physical protection of HLW in accordance with § 73.51 (requirements for physical protection of stored spent nuclear fuel and HLW). The requirements for physical protection include: (1) Capabilities to detect and assess unauthorized access or activities and protect against loss of control of the facility; (2) limiting access to HLW by means of two physical barriers; (3) providing continual surveillance of the protected area in addition to protection by an active intrusion alarm; and (4) providing a primary alarm station located within the protected area and have [having] bullet-resisting walls, doors, ceiling, and floor. These requirements provide high assurance that physical protection of the repository includes appropriate measures to prevent and respond to unauthorized access and activities, including the potential for armed intruders (*e.g.*, terrorist activity).

The Commission also addressed infrastructure requirements for emergency response (66 FR 55746, November 2, 2001).

Section 180(c) of the Nuclear Waste Policy Act requires DOE to provide technical assistance and funding for training State and local governments and Tribes for safe routine transportation and emergency response. However, NRC’s responsibility for oversight

and review of DOE’s emergency plans \* \* \* does not include responsibility for how DOE provides for technical assistance and funding. Additionally, under NEPA, the potential for (environmental) impacts due to transportation, including accidents, is the responsibility of DOE to assess and mitigate.

Section 4.5.7, “Emergency Planning,” of the draft Yucca Mountain Review Plan provides guidance regarding the review of DOE’s application with respect to emergency planning regulations.

No changes were made to the Yucca Mountain Review Plan as a result of this comment.

### 11.3 Issue Resolution

*Issue:* When will the 293 agreements regarding key technical issues be resolved?

*Comment.* Commenters asked when the 293 identified unresolved issues would be resolved and whether the repository would be licensed if the issues were unresolved. One commenter stated that if NRC staff uses the technical understanding and basis for issue resolution developed during preclicensing, it must explicitly reference to the supporting documentation. One commenter was concerned that haste in issue resolution would result in some issues not being properly resolved. Another commenter stated that DOE’s site recommendation is premature and that years are still required to amass information necessary for a license application. Another commenter asked whether issues identified by the U.S. Government Accounting Office would be included in the licensing process.

*Response.* In 293 agreements with NRC, DOE agreed to provide additional information to NRC regarding key technical issues as part of the preclicensing issue resolution process. NRC staff expects that this preclicensing issue resolution will continue up to the time that DOE submits an application for a construction authorization for a repository at Yucca Mountain and that DOE will address the 293 agreements before submitting the application. During preclicensing interactions with DOE, NRC staff has stayed informed on issues related to DOE’s site characterization and the repository design process and identified concerns regarding these issues in public meetings and documents. Issues identified by the U.S. Government Accounting Office were taken from issues raised by NRC staff.

NRC staff has made clear that a licensing decision will be based on information contained in the DOE application. Issues may be reopened, or new issues may be identified, during the