

October 26, 2005

MEMORANDUM TO: Luis A. Reyes  
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary /RA/

SUBJECT: STAFF REQUIREMENTS - SECY-05-0045 - DENIAL OF A  
PETITION FOR RULEMAKING TO REVISE 10 CFR PART 50 TO  
REQUIRE OFFSITE EMERGENCY PLANS TO INCLUDE  
NURSERY SCHOOLS AND DAY CARE CENTERS (PRM-50-79)

The Commission has approved the staff's recommendation to deny the petition for rulemaking (PRM-50-79) and publish the associated *Federal Register* notice, subject to the comments and changes noted below.

The staff should seek further information from the Federal Emergency Management Agency (FEMA) on the level of communication taking place between state and local governments and day care centers in the Three Mile Island (TMI) emergency planning zone. The staff should explore with FEMA and other stakeholders options to further assess the questions raised in the petition about local implementation of relevant requirements and guidance and provide any appropriate recommendations for improvement, as necessary. These options should include public outreach and surveying of day care centers and nursery schools in the TMI emergency planning zone to ascertain the level of cognizance of emergency response activities that would apply to them in the event of an emergency at TMI. The staff should inform the Commission of its progress on this issue within 60 days.

(EDO)

(SECY Suspense: 12/27/05)

The staff shall develop guidance and expectations for the NRC review of FEMA's assessment and findings of offsite emergency preparedness.

In addition, the staff should brief the Commission Technical Assistants on how pending organizational changes at the Department of Homeland Security (DHS) will affect the NRC's current relationship with FEMA. The staff should begin discussions with DHS regarding any revisions that may be necessary to the current Memorandum of Understanding (MOU) between the NRC and FEMA as a result of organizational changes. The staff should use these discussions as a vehicle to ensure that any needed changes to strengthen cooperation between the two agencies are made.

Changes to the *Federal Register* notice

SECY NOTE: THIS SRM WILL BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS  
AFTER DISPATCH OF THE LETTER TO THE PETITIONER.

1. On page 5, 2<sup>nd</sup> to last item in the table, move the 'X' to place it in the proper column.
2. On page 6, in the heading in the middle of the page, insert an apostrophe after 'PETITIONERS'.
3. On page 6, 1<sup>st</sup> full paragraph, revise line 5 to read ' ... regulations to ensure that ....'
4. On page 8, 1<sup>st</sup> full paragraph under "PUBLIC COMMENTS", line 4, after the period insert the following new sentence: In addition, the NRC received 1 letter that discussed KI but did not take a position on the petition.
5. On page 9, move the line that discusses the letter on KI to the end of the list.
6. On page 9, revise the sentence about the 12 letters from State Governments to read ' ... that the petitioners' requests are adequately addressed ....'
7. On page 10, paragraph 1., revise line 1 to read 'The petitioners' first and more general request ....'
8. On page 10, last paragraph, revise lines 2 and 3 to read ' ... nuclear power plants. And that consequently, no ....'
9. On page 11, 1<sup>st</sup> full paragraph, revise line 2 to read ' ... are adequate and whether there is reasonable assurance that they can be implemented. and it FEMA uses the ....' Revise lines 3 and 4 to read ' ... makes its findings as to whether under 10 CFR 50.47(a)(2) that the emergency plans ....' Revise line 5 to read ' ... will be taken under 10 CFR 50.47(a)(2). The NRC's findings are based upon ....' Revise lines 5 through 7 to read ' ... and determinations in this area. As to whether state and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented. Revise line 14 to read ' ... this information and considering that the existing regulatory structure already has requirements addressing the facilities of concern to the petitioners, no revision ....' Revise the last line to read ' ... to the petitioners' general ....'
10. On page 11, paragraph A., revise line 1 to read 'Require that children attending daycare and nursery schools be assigned to ....'
11. On page 11, last paragraph, revise line 1 to read ' ... petitioners' requested ....'
12. On page 12, revise line 1 from the top to read ' ... 4) specifies provides that state and local government offsite emergency plans should designate ....' Revise lines 4 and 5 from the top to read ' ... protects the public. and the NRC cannot license or allow a plant to continue to operate if FEMA does not make such a finding. Under ....'
13. On page 12, paragraph B., revise line 1 to read 'Require that children attending

SECY NOTE: THIS SRM WILL BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS AFTER DISPATCH OF THE LETTER TO THE PETITIONER.

daycare and nursery schools ~~be~~ are provided ....'

14. On page 12, paragraph under the heading "NRC Review:", revise lines 2 through 4 to read ' ... plans are adequate. ~~and the NRC cannot license or allow a plant to continue to operate if FEMA does not make such a finding or if the NRC does not have a specific basis for overriding FEMA's finding. FEMA's ....~~' Revise line 5 to read ' ... 4) **specifies** provides that the state and local government offsite emergency plans **should** designate ....' Revise line 7 to read ' ... this provisions is ....' Revise lines 8 and 9 to read ' ... Part 50 **is** would not be needed since the requested action is already provided for.'
15. On page 12, paragraph C., revise line 1 to read '**Require that c**Children attending daycare and nursery schools ~~be~~ are transported ....'
16. On page 13, 1<sup>st</sup> paragraph, revise line 3 to read ' ... Department of Transportation **or appropriate state authorities.**'
17. On page 13, in the paragraph under "NRC Review:" in the middle of the page, revise lines 2 and 3 to read ' ... considers the **existing requirements and guidance** for currently required agreements between bus drivers and local authorities **to be similar to the requested** detailed driver ....' Revise line 3 to read ' ... EV-2 (p. 10) **specifies that provides** bus ....' Revise line 4 to read ' ... and dosimetry **are to be provided** for the ....' Revise line 5 to read ' ... also **specifies that provides** for agreements ....' Revise line 6 to read ' ... local authorities **are to be established** for the ....' Delete the last sentence (Absent compelling evidence ...a roster.) and replace it with the following: NRC has made FEMA aware of the petitioners' concerns, and FEMA recently completed an emergency preparedness exercise at TMI that included issues related to transportation of students attending daycare centers and nursery schools. FEMA's final report on this exercise was issued on August 4, 2005. FEMA identified no deficiencies in this area.
18. On page 14, 1<sup>st</sup> paragraph, revise lines 1 and 2 to read ' ... and guidance **are adequate. adequately provide for this request. Although the petition requested that day care centers and nursery schools have the responsibility for conveying their emergency planning information to government officials, under current requirements, this communication burden rests with responsible responsibility resides with state and local government officials.** FEMA's GM EV-2 (p. 5) **specifies** provides that the ....'
19. On page 14, 2<sup>nd</sup> paragraph, revise line 1 to read '**NRC and FEMA expect l**ocal governments **to should** assume ....' Revise line 2 to read ' ... area, and **to should** work closely ....' Revise line 3 to read ' ... (pp. 5 and 6) **specifies** provides that local ....'
20. On page 14, 3<sup>rd</sup> paragraph, revise line 1 to read ' ... (pp. 5 and 6) **specifies** provides that evacuation planning **is to shall** include a ....'
21. On page 15, in the paragraph after the bullets, delete the 1<sup>st</sup> sentence (Absent compelling evidence ... offices.) Revise line 3 to read '**Based on the above,** the petitioners' requested ....'

SECY NOTE: THIS SRM WILL BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS AFTER DISPATCH OF THE LETTER TO THE PETITIONER.

22. On page 16, 2<sup>nd</sup> paragraph under “NRC Review:”, revise line 1 to read ‘ ... (pp. 6 and 7) **specifies** ~~provides~~ that ....’ Revise line 2 to read ‘ ... nursery schools, **are to** demonstrate their ....’ Revise line 10 to read ‘ ... school activities **that might arise during exercise participation. In addition, as mentioned in the response to request “E,” pursuant to FEMA guidance, state and local government officials should be contacting daycare centers and nursery schools regarding emergency plans for the facilities.** The petition has ....’
23. On page 16, paragraph H., revise line 2 to read ‘ ... center, to **ensure** no ....’
24. On page 17, 1<sup>st</sup> full paragraph, revise line 3 to read ‘ ... planning, has **determined that it is unnecessary** ~~declined~~ to require that ....’
25. On page 17, 2<sup>nd</sup> paragraph under “NRC Review:”, revise line 1 to read ‘ ... adequately **address** ~~provide~~ for this ....’ Revise line 2 to read ‘ ... EV-2 (p. 2) **specifies** ~~provides~~ that the ....’ Delete the last 2 sentence (There is no need ... Part 50.) and replace with the following: The Commission believes that parental notification via the EAS is adequate to assure that parents will be informed of their childrens’ location following an emergency evacuation.
26. On page 18, revise line 6 from the top to read ‘ ... petition **did not** ~~failed~~ to provide ....’
27. On page 18, last paragraph, delete the 1<sup>st</sup> sentence (As previously ...adequate.) Revise line 3 to read ‘ ... (p. 4) **specifies** ~~provides~~ that state and local government offsite emergency plans **are to** designate ....’
28. On page 19, line 4 from the top, insert a footnote after the period which reads: See March 23, 2005 letter from Roy Zimmerman to Eric J. Epstein and March 24, 2005 letter from Roy Zimmerman to Lawrence T. Christian (available on NRC’s ADAMS document system under the accession numbers ML050590344 and ML050590357, respectively).
29. On page 19, delete the sentence in lines 4 through 6 from the top (Absent compelling information ... Part 50.) and replace with the following: The Commission believes that the current publication practices are adequate.
30. On page 19, in the paragraph under “NRC Review:” in the middle of the page, line 1, insert a comma after “guidance”.
31. On page 19, last paragraph, revise line 1 to read ‘ ... (p. 6) **specifies** ~~provides~~ that a method **is to** exist ....’ Revise lines 3 and 4 to read ‘ ... emergency. ~~The Commission sees no added safety benefit of requiring a written script when FEMA~~ **has decided that it is unnecessary** ~~declined~~ to incorporate ....’ Revise the last line to read ‘ ... inadequate. **As a result, the Commission sees no added safety benefit in requiring a written script.**’
32. On page 20, paragraph 1., revise line 8 and 9 to read ‘ ... issue that ~~exists on a local~~

SECY NOTE: THIS SRM WILL BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS AFTER DISPATCH OF THE LETTER TO THE PETITIONER.

level rather than a regulatory issue that exists on a national level and can be ....’

33. On page 20, last paragraph, revise lines 1 and 2 to read ‘The **requested rulemaking proposed revisions** would not enhance **openness or** public confidence or **openness** in our ....’
34. On page 21, revise line 1 from the top to read ‘ ... petitioners’ **requests raise** contentions ~~are based on a potential~~ **issues** lack of compliance with **the** existing ....’ Revise line 2 from the top to read ‘ ... and guidance. **The NRC staff does not believe that the contentions identify deficiencies in regulatory requirements.** and do not provide a basis for amending the regulation.’ Revise line 4 from the top to read ‘ ... definition of a “special ....’ Revise line 5 from the top to read ‘ ... such, it is the responsibility of state and local governments **are currently required** to ensure ....’ Delete the sentence in lines 6 through 8 from the top (The staff does ... process.) Revise line 11 from the top to read ‘ ... commitment **to** of ....’
35. On page 21, paragraph 4., revise line 3 to read ‘ ... guidance already **adequately address provide for many of the petition ....’** Delete the sentence in lines 6 and 7 (The NRC staff ... value.)
36. On page 22, paragraph 5., revise line 5 to read ‘ ... guidance already **adequately address provide for many of the petition’s requests.’**
37. On page 22, last paragraph, revise the last 2 lines to read ‘ ... guidelines. Accordingly, the petition is denied and forwarded to FEMA for review and investigation. **NRC staff met with FEMA officials to assure an understanding of this issue for consideration by FEMA as reflected in separate letters to the petitioner and TMI-Alert Chairman, Eric Epstein dated respectively, March 23, 2005 and March 24, 2005. [Insert here a footnote which reads: FEMA did evaluate a May 3, 2005 Emergency Planning exercise at TMI. NRC understands that during this exercise FEMA reviewed aspects of emergency planning involving nurseries and daycare centers. No deficiencies were identified by FEMA during the exercise. FEMA’s final report on the exercise was issued on August 4, 2005.] Copies of those letters are available through the NRC’s ADAMS document system and can be located using accession numbers ML050590344 and ML050590357, respectively. The NRC staff will continue to work with FEMA to ensure emergency planning exercises are appropriately focused and provide adequate assurance regarding compliance with NRC and FEMA regulations and guidance.’**

#### Changes to the letter to the petitioner

38. On page 1, paragraph 4, revise lines 4 and 5 to read ‘ ... area. Accordingly, **the NRC staff met with FEMA to discuss these issues and** your petition ~~was is denied and~~ forwarded to FEMA ....’ Insert a footnote at the end of the paragraph which reads: FEMA did **evaluate** a May 3, 2005 Emergency Planning exercise at TMI. NRC understands that during this exercise FEMA did look at aspects of emergency planning involving nurseries and daycare centers. No deficiencies were identified by FEMA

SECY NOTE: THIS SRM WILL BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS AFTER DISPATCH OF THE LETTER TO THE PETITIONER.

during the exercise. FEMA's final report on the exercise was issued on August 4, 2005.

cc: Chairman Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
Commissioner Jaczko  
Commissioner Lyons  
OGC  
CFO  
OCA  
OPA  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
PDR

SECY NOTE: THIS SRM WILL BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS  
AFTER DISPATCH OF THE LETTER TO THE PETITIONER.