August 1, 2006

Lawrence T. Christian
133 Pleasant View Terrace
New Cumberland, Pennsylvania 17070

Dear Mr. Christian:

The purpose of this letter is to inform you that the U.S. Nuclear Regulatory Commission (NRC) is re-publishing its December 19, 2005, notice denying your September 4, 2002, petition for rulemaking. We are re-publishing our notice to correct errors and clarify the NRC's regulatory position. The petition was docketed by NRC on September 23, 2002, and has been assigned Docket No. PRM-50-79. The petition requested that the NRC amend its regulations regarding offsite emergency plans for nuclear power plants to ensure that all day care centers and nursery schools in the Emergency Planning Zone (EPZ) of nuclear power facilities are properly protected in the event of a radiological emergency.

The petition was published in the Federal Register on November 1, 2002, for a 75-day public comment period. The NRC received 56 public comment letters relating to this petition. Twenty-three letters supported granting the petition (mostly from citizens, including three letters with 410 signatures), while 30 letters requested that the petition be denied. Those letters that supported denial of the petition were mostly from State and local governmental agencies, the Federal Emergency Management Agency (FEMA), and NRC licensees.

The Commission denied your petition for rulemaking because current requirements and guidance, along with State and local government established emergency plans provide reasonable assurance of adequate protection of all members of the public, including day care centers and nursery schools, in the event of a nuclear power plant incident.

However, your petition raised questions about implementation and compliance with relevant requirements and guidelines that were previously determined to be adequate. The Commission considered your petition as identifying potential implementation problems with the current requirements and guidelines in your State and local area. Accordingly, the NRC staff met with FEMA to discuss these issues and your petition was forwarded to FEMA for investigation.[1]

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[1] FEMA evaluated a May 3, 2005 Emergency Planning exercise at TMI. NRC understands that during this exercise FEMA reviewed aspects of emergency planning involving nurseries and day care centers. No deficiencies were identified by FEMA during the exercise. FEMA's final report on the exercise was issued on August 4, 2005.

The Commission's emergency planning regulations for nuclear power reactors are contained in 10 CFR Part 50, specifically § 50.33(g), 50.47, 50.54 and Appendix E. As stated in 10 CFR 50.47(a)(1), in order to issue an initial operating license, the NRC must make a finding "that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency" to protect the public health and safety. An acceptable way of meeting the NRC's emergency planning requirements is contained in Regulatory Guide (RG) 1.101, Rev. 4, "Emergency Planning and Preparedness for Nuclear Power Reactors" (ADAMS Accession No. ML032020276). This guidance document endorses NUREG-0654/FEMA-REP-1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants" (ML040420012; Addenda: ML021050240), an NRC and FEMA joint guidance document intended to provide nuclear facility operators and Federal, State, and local government agencies with acceptance criteria and guidance on the creation and review of radiological emergency plans. Together, RG 1.101, Rev. 4, and NUREG-0654, Rev. 1, provide guidance to licensees and applicants on methods acceptable to the NRC staff for complying with the Commission's regulations for emergency response plans and preparedness at nuclear power reactors.

Emergency plans for all nuclear power reactors are required under Part 50, as supported by NUREG-0654/FEMA-REP-1 and applicable FEMA guidance documents, to have specific provisions for all "special facility populations," which refers not only to pre-schools, nursery schools, and day care centers, but all kindergarten through twelfth grade (K-12) students, nursing homes, group homes for physically or mentally challenged individuals and those who are mobility challenged, as well as those in correctional facilities. FEMA GM 24, "Radiological Emergency Preparedness for Handicapped Persons," dated April 5, 1984, and GM EV-2, "Protective Actions for School Children," dated November 13, 1986, provide further guidance. These specific plans should, at a minimum: (1) identify the population of such facilities; (2) determine and provide protective actions for these populations; (3) establish and maintain notification methods for these facilities; and (4) determine and provide for transportation and relocation.

State and local Emergency Operations Plans and procedures are initially and periodically evaluated by Department of Homeland Security (previously FEMA). The plans are tested in a biennial emergency preparedness exercise conducted for each nuclear power station. If plans or procedures are found to be inadequate, they must be corrected.

The NRC emergency preparedness regulations are predicated on State and local governments that participate in emergency planning assuming overall responsibility for ensuring the performance of off-site planning and preparedness activities. This assignment is appropriate since State and local governments have responsibility for public health and safety, and the authority to take actions to protect the public during an emergency. A radiological emergency is but one of the hazards for which a State and its local government entities may prepare. All emergency response is local; the planning for that response must similarly reflect local capabilities, constraints, organizational relationships, statutes, regulations, and ordinances. As such, the NRC's regulations allow the flexibility for State or local governments to task other entities, such as but not limited to, day care facilities, with emergency preparedness activities and obligations responsive to the applicable planning standards of 10 CFR 50.47(b).

The overall responsibility for demonstrating, with reasonable assurance, that adequate

protective measures can and will be taken to protect the public in the event of a radiological emergency, remains with the participating State and local governments.

The Commission believes that current emergency planning requirements provide reasonable assurance of adequate protection of all members of the public, including children in nursery schools and day care centers. Further details are discussed in the enclosed re-issued notice of Denial of Petition for Rulemaking, which will be published in the Federal Register.

Sincerely,

***/RA/***

Annette L. Vietti-Cook

Enclosure:
Federal Register Notice of
Denial of Petition for Rulemaking

cc: Eric J. Epstein

7590-01-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-79]

Mr. Lawrence T. Christian, et al.; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is republishing its December 19, 2005 notice (70 FR 75085) denying a petition for rulemaking submitted by Mr. Lawrence T. Christian and 3,000 co-signers on September 4, 2002, to correct errors and clarify the NRC's regulatory position. These changes do not affect the Commission's denial of the petition. The petition was docketed by the NRC on September 23, 2002, and was assigned Docket No. PRM-50-79. The petition requests that the NRC amend its regulations regarding offsite state and local government emergency plans for nuclear power plants to ensure that all day care centers and nursery schools in the Emergency Planning Zone (EPZ) of nuclear power facilities are properly protected in the event of a radiological emergency.

ADDRESSES: Publicly available documents related to this petition, including the petition for rulemaking, public comments received, and the NRC's letter of denial to the petitioner, may be viewed electronically on public computers in the NRC's Public Document Room (PDR), 01 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be

viewed and downloaded electronically via the NRC rulemaking web site at http://ruleforum.llnl.gov.

Publicly available documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Electronic Reading Room at http://www.nrc.gov/reading-rm/adams.html. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR reference staff at (800) 387-4209, (301) 415-4737 or by e-mail to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Michael T. Jamgochian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-3224, e-mail MTJ1@nrc.gov.

SUPPLEMENTARY INFORMATION:

## BACKGROUND

In December 1979, the President directed the Federal Emergency Management Agency (FEMA), now part of the U.S. Department of Homeland Security (DHS), to lead state and local emergency planning and preparedness activities with respect to jurisdictions in proximity to nuclear reactors. FEMA has responsibilities under Executive Order 12148, issued on July 15, 1979, to establish federal regulations and policies and to coordinate civil emergency planning within emergency preparedness programs. Consequently, FEMA is the lead authority concerning the direction, recommendations, and determinations with regard to offsite state and local government radiological emergency planning efforts necessary for the public health and

safety. FEMA sends its findings to the NRC for final determinations. FEMA implemented Executive Order 12148 in its regulations outlined in 44 CFR Part 350. Within the framework of authority created by Executive Order 12148, FEMA also entered into a Memorandum of Understanding (MOU) (58 FR 47966, September 9, 1993) with the NRC to provide acceptance criteria for and determinations as to whether state and local government emergency plans are adequate and capable of being implemented to ensure public health and safety. FEMA's regulations are further amplified by FEMA Guidance Memorandum (GM) EV-2, "Protective Actions for School Children," and the "Radiological Emergency Preparedness Exercise Evaluation Methodology" (67 FR 20580 dated April 25, 2002).

The Commission's emergency planning regulations for nuclear power reactors are contained in 10 CFR Part 50, specifically § 50.33(g), 50.47, 50.54 and Appendix E. As stated in 10 CFR 50.47(a)(1), in order to issue an initial operating license, the NRC must make a finding "that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency" to protect the public health and safety. An acceptable way of meeting the NRC's emergency planning requirements is contained in Regulatory Guide (RG) 1.101, Rev. 4, "Emergency Planning and Preparedness for Nuclear Power Reactors" (ADAMS Accession No. ML032020276). This guidance document endorses NUREG-0654/FEMA-REP-1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants" (ML040420012; Addenda: ML021050240), an NRC and FEMA joint guidance document intended to provide nuclear facility operators and federal, state, and local government agencies with acceptance criteria and guidance on the creation and review of radiological emergency plans. Together, RG 1.101, Rev. 4, and NUREG-0654, Rev. 1, provide guidance to licensees and applicants on methods acceptable to the NRC staff for complying with the Commission's regulations for emergency response plans and preparedness at nuclear power reactors.

Emergency plans for all nuclear power reactors are required under Part 50, as amplified by NUREG-0654/FEMA-REP-1 and applicable FEMA guidance documents, to have specific provisions for all "special facility populations," which refers not only to pre-schools, nursery schools, and day care centers, but all kindergarten through twelfth grade (K-12) students, nursing homes, group homes for physically or mentally challenged individuals and those who are mobility challenged, as well as those in correctional facilities. FEMA GM 24, "Radiological Emergency Preparedness for Handicapped Persons," dated April 5, 1984, and GM EV-2, "Protective Actions for School Children," dated November 13, 1986, provide further guidance. These specific plans should, at a minimum:

- Identify the population of such facilities;
- Determine and provide protective actions for these populations;
- Establish and maintain notification methods for these facilities; and
- Determine and provide for transportation and relocation.

State and local Emergency Operations Plans and procedures are initially and periodically evaluated by FEMA. The plans are tested in a biennial emergency preparedness exercise conducted for each nuclear power station. If plans or procedures are found to be inadequate, they must be corrected.

The NRC emergency preparedness regulations are predicated on State and local governments that participate in emergency planning assuming overall responsibility for ensuring the performance of off-site planning and preparedness activities. This predicate is appropriate since State and local governments have responsibility for public health and safety, and the authority to take actions to protect the public during an emergency. A radiological emergency is but one of the hazards for which a State and its local government entities may prepare. Emergency response is intended to be primarily local; the planning for that response must similarly reflect local capabilities, constraints, organizational relationships, statutes, regulations,

and ordinances. The Commission's emergency preparedness regulations allow a finding of reasonable assurance that adequate protective measures can and will be taken during a radiological emergency where a State or local government tasks a non-governmental entity with emergency planning, preparedness, or response activities responsive to the planning standards of 10 CFR 50.47(b), provided that the overall responsibility for demonstrating, with reasonable assurance, that adequate protective measures can and will be taken in the event of a radiological emergency continues to remain with the State and local governments.

Onsite and offsite emergency response plans for nuclear power plants are evaluated against the planning standards established in 10 CFR § 50.47(b) and 44 CFR Part 350, as informed by supporting regulatory guidance and case law. The NRC and FEMA jointly developed NUREG-0654 / FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," to provide guidance and acceptance criteria for the development of licensee and State and local government emergency plans. NUREG-0654 / FEMA-REP-1 is incorporated by reference in 44 CFR §350.5 and the planning standards and related criteria therein are used by FEMA (now part of DHS) to review, evaluate, and approve State and local radiological emergency plans and preparedness. FEMA Guidance Memorandum (GM) EV-2, "Protective Actions for School Children," identifies methods acceptable to DHS (previously FEMA) for showing compliance with the planning standards and evaluation criteria, to the extent they apply to school children. Methods different from those identified in GM-EV-2 can be found acceptable if they provide an adequate basis for FEMA to determine that the planning standards and evaluation criteria are met. The NRC will then base its licensing decisions, with regard to offsite emergency planning, on a review of the FEMA findings.

The petition denial references GM-EV-2 in several locations as an example of existing regulatory guidance that satisfies the intent of the individual petition requests. However, the

Commission recognizes that DHS may find alternatives, other than those identified in GM-EV-2, to be acceptable means for meeting the planning standards and the evaluation criteria in NUREG-0654/FEMA-REP-1.

## AVAILABILITY OF DOCUMENTS

The NRC is making the documents identified below available to interested persons through one or more of the following:

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Public File Area O-1 F21, Rockville, Maryland. Copies of publicly available NRC documents related to this petition can be viewed electronically on public computers in the PDR. The PDR reproduction contractor will make copies of documents for a fee.

Rulemaking Website (Web). The NRC's interactive rulemaking Website is located at http://ruleforum.llnl.gov. Selected documents may be viewed and downloaded electronically via this Website.

The NRC's Public Electronic Reading Room (ADAMS). The NRC's public Electronic Reading Room is located at http://www.nrc.gov/reading-rm/adams.html. Through this site, the public can gain access to the NRC's Agencywide Document Access and Management System, which provides text and image files of NRC's public documents.

NRC Staff Contact (NRC Staff). For single copies of documents not available in an electronic file format, contact Michael T. Jamgochian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-3224, e-mail MTJ1@nrc.gov.

| Document | PDR | Web | ADAMS | NRC Staff |
|---|---|---|---|---|
| Petition for Rulemaking (PRM-50-79) | X | X | ML023110466 | |
| *Federal Register* Notice – Receipt of Petition for Rulemaking (67 FR 66588; Nov. 1, 2002) | X | X | ML023050008 | |
| *Federal Register* Notice – Receipt of Petition for Rulemaking; Correction (67 FR 67800; Nov. 7, 2002) | X | X | ML040770516 | |
| Public Comments, Part 1 of 2 | X | X | ML040770480 | |
| Public Comments, Part 2 of 2 | X | X | ML040770544 | |
| Additional Public comments | | X | ML041910013 | |
| Letter of Denial to the Petitioners | X | X | ML053260004 | |
| Public Comment (PEMA) on Dec. 19, 2005 FRN | X | X | ML060680076 | |
| Public Comment (DHS/FEMA) on Dec. 19, 2005 FRN | X | X | ML060860342<br>ML060730534 | |
| RG 1.101, Rev. 4, Emergency Planning and Preparedness for Nuclear Power Reactors (July 2003) | X | | ML032020276 | |
| NUREG-0654/FEMA REP-1, Rev. 1 Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants (November 1980) | | X | ML040420012 | |
| NUREG-0654/FEMA-REP-1, Rev. 1 Addenda (March 2002) | X | | ML021050240 | |
| Executive Order 12148, Federal Emergency Management (July 20, 1979) | X | | | |
| MOU Between FEMA and NRC Relating to Radiological Emergency Planning and Preparedness (June 17, 1993) | | | | X |
| FEMA GM 24, Radiological Emergency Preparedness for Handicapped Persons (April 5, 1984) | | | | X |
| Radiological Emergency Preparedness (REP) Exercise Methodology (66 FR 47526 - | | | | |

| | | | | |
|---|---|---|---|---|
| September 12, 2001 and 67 FR 20580 - April 25, 2002) | | | | X |
| **Document** | **PDR** | **Web** | **ADAMS** | **NRC Staff** |
| FEMA GM EV-2, Protective Actions for School Children (November 13, 1986) | | | | X |

THE PETITIONERS' REQUEST

This petition for rulemaking (PRM-50-79) generally requests that the NRC establish new rules requiring that emergency planning for day care centers and nursery schools located in the Emergency Planning Zone (EPZ) be included in the state and local government offsite emergency plans of all NRC nuclear power facility licensees. More specifically, the petition requests that the NRC amend its regulations to ensure that all children attending day care centers and nursery schools within the EPZ are:

A. Assigned to designated relocation centers established safely outside of the EPZ.

B. Provided with designated transportation to a relocation center in the event of an emergency evacuation.

C. Transported in approved child-safety seats that meet state and federal laws as they pertain to the transportation of children and infants under 50 pounds in weight or 4 feet 9 inches in height.

The petitioners also request that the following be mandated by NRC regulations:

D. The creation and maintenance of working rosters of emergency bus drivers and back-up drivers for day care center and nursery school evacuation vehicles, and the establishment of a system for notifying these individuals in the event of a radiological emergency. These rosters should be regularly checked and updated, with a designated back-up driver listed for each vehicle and route.

E. Notification of emergency management officials by individual preschools as to

the details of each institution's radiological emergency plan.

F. Annual site inspections of day care centers and nursery schools within the evacuation zone by emergency management officials.

G. Participation of day care centers and nursery schools within the EPZ in radiological emergency preparedness exercises designed to determine each institution's state of readiness.

H. Creation of identification cards, school attendance lists, and fingerprint records for all children who are to be transported to a relocation center, to ensure no child is left behind or is unable, due to age, to communicate his or her contact information to emergency workers.

I. Development by emergency management officials of educational materials for parents, informing them what will happen to their children in case of a radiological emergency, and where their children can be picked up after an emergency evacuation.

J. Stocking of potassium iodide (KI) pills and appropriate educational materials at all day care centers and nursery schools withing the EPZ.

K. Radiological emergency preparedness training for all day care center and nursery school employees within the EPZ.

L. Listing of designated relocation centers for day care centers and nursery schools in area phone directories, so that parents can quickly and easily find where their children will be sent in case of a radiological emergency.

M. Establishment of toll-free or 911-type telephone lines to provide information about radiological emergency plans and procedures for day care centers and nursery schools within the EPZ.

N. Creation of written scripts for use by the local Emergency Alert System (EAS)

that include information about evacuation plans and designated relocation centers for day care centers and nursery schools.

## PUBLIC COMMENTS

The NRC received 55 public comment letters relating to this petition. Twenty-three letters supported granting the petition (mostly from citizens including three letters with 410 signatures), while 30 letters requested that the petition be denied. Those letters that supported denial of the petition were primarily from state and local governmental agencies, FEMA, and licensees. In addition, the NRC received a letter that discussed KI but did not take a position on the petition and a letter that strongly supports the development of all-hazards emergency plans for child day care facilities and nursery schools throughout the state but did not take a position on the petition. Subsequent to the December 19, 2005 notice of denial, the NRC received two letters and an E-mail commenting on errors and potential mis-characterizations in the published denial.

More specifically;

23 Letters supporting the granting of the petition:

13 Comment letters from citizens supporting the granting of the petition.

1 Comment letter from a citizens group supporting the granting of the petition.

4 Comment letters from local governmental agencies or officials supporting the petition.

3 Comment letters with 410 signatures supporting the petition.

1 Letter from the petitioner supporting the petition. The petitioner also “suggests a federal model that mirrors the Illinois, Massachusetts, Michigan, or Nebraska...” emergency plans for day care centers and nursery schools, even though those state plans only meet about 30 percent of the elements requested by the

petitioner, while meeting FEMA guidance.

1 Letter from eight local governments that agreed with the concepts of the petition but had reservations about some of the specific requests of the petitioners.

30 Letters asking the Commission to deny the petition:

4 Letters from two local governments located near the petitioners, and from two citizens to deny the petition but suggested that the day care centers and nursery schools should be responsible for developing their own emergency plans.

8 Letters from local governmental agencies to deny the petition for rulemaking because they felt that current regulations are adequate.

12 Letters from State governments including two letters from FEMA (Headquarters and Region 7) to deny the petition, based on the opinion that the petitioners' requests are adequately addressed in current regulations and guidance.

4 Letters from licensees or companies that own nuclear utilities, to deny the petition.

1 Nuclear Energy Institute (NEI) letter to deny the petition.

1 Letter representing six licensees to deny the petition.

1 Letter that discusses KI, but does not take a position on the petition.

1 Letter from the Special Assistant to the Governor of Pennsylvania withdrawing an earlier submitted letter and strongly supporting the development of all-hazards emergency plans for child day care facilities and nursery schools throughout the state. This letter did not express a position on the petition and was characterized by the NRC as supporting the petition. The Director of PEMA, on behalf of the Governor's office, subsequently challenged the NRC's characterization of the original letter as supporting the petition and requested the

characterization be formally corrected.

1 Letter and E-mail from DHS/FEMA commenting on errors and potential mis-characterizations within the December 19, 2005, *Federal Register* Notice denying the petition.

NRC EVALUATION

The Commission has reviewed each of the petitioners' requests and provides the following analysis:

1. The petitioners' first and more general request is that day care centers and nursery schools, located within the 10-mile EPZ, be included in state and local government offsite emergency planning.

NRC Review:

The current regulatory structure already requires that day care centers and nursery schools be included in the offsite emergency planning for nuclear power plants. Consequently, no revision to 10 CFR Part 50 is necessary. The Commission's emergency planning regulations, in 10 CFR 50.47, require the NRC to make a finding, before issuing an initial operating license, that there is "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." Implicit in this regulation is the requirement that offsite emergency plans be protective of all members of the public, including children attending day care centers and nursery schools, within the 10-mile EPZ. Joint NRC and FEMA implementing guidance, NUREG-0654/FEMA-REP-1, Rev. 1, states that emergency plans must provide specific means for "protecting those persons whose mobility may be impaired due to such factors as institutional or other confinement." NUREG-0654, Section II.J. and Appendix 4, as well as, FEMA GM 24, "Radiological Emergency Preparedness for

Handicapped Persons," dated April 5, 1984, also provide guidance. Children in day care centers and nursery schools are included in the category of persons needing special protection. FEMA GM EV-2, "Protective Actions for School Children," was issued to provide guidance to assist federal officials in evaluating adequacy of state and local government offsite emergency plans and preparedness for protecting school children during a radiological emergency. This guidance is also intended for state and local government officials and administrators of public and private schools, including licensed and government supported pre-schools and day care centers, for developing emergency response plans and preparedness for protecting the health and safety of children in their charge.

FEMA (now part of DHS) is the federal agency responsible for making findings and determinations as to whether state and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented. FEMA uses the guidance documents discussed above to make such findings. The NRC makes its finding as to whether the emergency plans provide a reasonable assurance that adequate protective measures can and will be taken under 10 CFR 50.47(a)(2). The NRC's findings are based upon FEMA findings and determinations in this area. The NRC would not grant an initial operating license if FEMA found that state and local government emergency plans did not adequately address day care centers and nursery schools. In accordance with 10 CFR 50.54(s)(2)(ii), if significant deficiencies in a state or local governments' off-site emergency plan were discovered after the operating license was issued, and those deficiencies were not corrected within four months of discovery (or a plan for correction was not in place), the Commission would determine whether the reactor should be shut down until the deficiencies are remedied or whether some other enforcement action would be appropriate. Based on this information and considering that the existing regulatory structure already has requirements addressing the facilities of concern to the petitioners, no revision to 10 CFR Part 50 is necessary in response to the petitioners' general

request.

The more specific elements of the petition follow:

A. Require that children attending day care centers and nursery schools be assigned to designated relocation centers established safely outside the EPZ.

NRC Review:

The petitioners' requested revision to 10 CFR Part 50 is not needed because the requested action is already covered by FEMA guidance documents. FEMA's GM EV-2 (p. 5) specifies that evacuation planning may be developed in three contexts: (1) part of the existing radiological emergency plans; (2) a separate annex of an existing integrated plan for many types of disasters and emergencies; or (3) a separate evacuation plan for all of the schools in each school system. GM EV-2 specifies that school officials should document in the plan the basis for determining the proper protective action (e.g., evacuation, early preparatory measures, early evacuation, sheltering, early dismissal or combination) including but not limited to, the name and location of relocation center(s), and transport route(s), if applicable and on an institution-specific basis. Furthermore, GM EV-2 specifies that local governments should ensure that appropriate organizational officials assume responsibility for the emergency planning and preparedness for all of the identified schools, including day care centers and nursery schools. Local governments should also ensure that the emergency planning undertaken by these organizations is integrated within the larger offsite emergency management framework for the particular nuclear power plant site. FEMA assesses offsite emergency plans using this guidance when making a finding that a plan adequately protects the public. Under the MOU between FEMA and the NRC, the NRC defers to FEMA's expertise in offsite emergency plan requirements and assessments.

B. Require that children attending day care centers and nursery schools be provided with designated transportation to relocation centers in the event of an emergency

evacuation.

NRC Review:

As previously discussed, FEMA (now part of DHS) is the federal agency responsible for making findings and determinations as to whether state and local emergency plans are adequate. FEMA's GM EV-2 (p. 5) specifies that school officials should document in their plans the basis for determining the proper protective action (e.g., evacuation, early preparatory measures, early evacuation, sheltering, early dismissal or combination) including but not limited to, the means for effecting protective actions and specific resources allocated for transportation and supporting letters of agreement if resources are provided from external sources, on an institution-specific basis. Furthermore, FEMA's GM EV-2 specifies that local governments should ensure that appropriate organizational officials assume responsibility for the emergency planning and preparedness for all of the identified schools, including day care centers and nursery schools. Local governments should also ensure that the emergency planning undertaken by these organizations is integrated within the larger offsite emergency management framework for the particular nuclear power plant site. FEMA reviews emergency plans to ensure that this provision is addressed. Consequently, a revision to 10 CFR Part 50 is not needed.

C. Require that children attending day care centers and nursery schools be transported in approved child-safety seats that meet state and federal laws as they pertain to the transportation of children and infants under 50 pounds in weight or 4 feet 9 inches in height.

NRC Review:

Requiring seat belts or child safety seats on school buses that may be used for evacuating schools is outside NRC statutory authority. Such a requirement would instead need to be promulgated by the Department of Transportation or appropriate state authorities.

D. Require the creation and maintenance of working rosters of emergency bus drivers and back-up drivers for day care center and nursery school evacuation vehicles, and the establishment of a system for notifying these individuals in the event of a radiological emergency. These rosters should be regularly checked and updated, with a designated back-up driver listed for each vehicle and route.

NRC Review:

The petitioners' requested revision to 10 CFR Part 50 is not needed because NRC considers the existing requirements and guidance adequate for the evaluation of planning with respect to transportation resources, including drivers. FEMA's GM EV-2 (pp. 5-6) specifies that school officials should document in the plan the basis for determining the proper protective action including: means for effecting protective actions; specific resources allocated for transportation and supporting letters of agreement if resources are provided from external sources; and, means for alerting and notifying appropriate persons and groups associated with the schools and the students, including the method for contacting and activating designated dispatchers and school bus drivers. Under the MOU between FEMA and the NRC, the NRC defers to FEMA's (now part of DHS) expertise in state and local emergency plan requirements and assessments. FEMA recently completed an emergency preparedness exercise at TMI and issued a final report on August 4, 2005. FEMA identified no deficiencies in this particular area.

E. Require notification of emergency management officials by individual preschools as to the details of each institution's radiological emergency plan.

NRC Review:

NRC considers that current NRC and FEMA (now part of DHS) requirements and guidance are adequate. FEMA's GM EV-2 (p. 5) identifies criteria by which an emergency plan will typically be acceptable if it fully addresses the emergency functions for the evacuation of, or other appropriate protective measures, for school children including licensed and government

supported pre-schools and day care centers. Accordingly, local governments should take the initiative to identify and contact all public and private school systems, including day care centers and nursery schools, within the designated plume exposure pathway EPZ to assure that both public and private school officials address appropriate planning for protecting the health and safety of their students from a commercial nuclear power plant accident.

The planning of both the public and private school officials should be closely coordinated with that of the local government. Local governments should ensure that appropriate organizational officials assume responsibility for the emergency planning and preparedness for all of the identified schools. Local governments should also ensure that the emergency planning undertaken by these organizations is integrated within the larger offsite emergency management framework for the particular nuclear power plant site.

As mentioned previously in response to issue “A”, the evacuation planning may be developed in three contexts: (1) part of the existing radiological emergency plans; (2) a separate annex of an existing integrated plan for many types of disasters and emergencies; or (3) a separate evacuation plan for all of the schools in each school system. GM EV-2 specifies that school officials should document in the plan the basis for determining the proper protective action (e.g., evacuation, early preparatory measures, early evacuation, sheltering, early dismissal or combination) including:

- Identification of the organization and officials responsible for both planning and effecting the protective action.
- Institution-specific information:
  - Name and location of school;
  - Type of school and age grouping (e.g., public elementary school, grades kindergarten through sixth);
  - Total population (students, faculty, and other employees);

- Means for implementing protective actions;
- Specific resources allocated for transportation and supporting letters of agreement if resources are provided from external sources; and
- Name and location of relocation center(s) and transport route(s), if applicable.

C If parts of the institution-specific information apply to many or all schools, then the information may be presented generically.

C Time frames for effecting the protective actions.

C Means for alerting and notifying appropriate persons and groups associated with the schools and the students including:

- Identification of the organization responsible for providing emergency information to the schools;
- The method (e.g., siren and telephone calls) for contacting and providing emergency information on recommended protective actions to school officials;
- The method (e.g., siren, tone-alert radios, and telephone calls) for contacting and activating designated dispatchers and school bus drivers; and
- The method (e.g., Emergency Alert System (EAS) messages) for notifying parents and guardians of the status and location of their children.

Based on the above, the petitioners' requested revision to 10 CFR Part 50 is not required.

F. Require annual site inspections of day care centers and nursery schools within the evacuation zone by emergency management officials.

NRC Review:

Inspections of day care centers and nursery schools are the responsibility of the individual state and are outside NRC statutory authority. The Commission sees no safety reason within the scope of its statutory authority to require annual inspections of day care centers and nursery schools.

G. Require the participation of day care centers and nursery schools within the EPZ in radiological emergency preparedness exercises designed to determine each institution's state of readiness.

NRC Review:

Current NRC regulations in 10 CFR Part 50, Appendix E, Section F.2, permit exercises without public (including day care centers and nursery schools) participation. The Commission has determined that exercises can be adequately evaluated without the participation of schools or members of the public. This eliminates safety concerns for students, as well as, the disruption of day care center and nursery school activities that might arise during exercise participation. In addition, as mentioned in the response to request "E," pursuant to FEMA (now part of DHS) guidance, governments should take the initiative to identify and contact all public and private school systems, including day care centers and nursery schools, within the designated plume exposure pathway EPZ to assure that both public and private school officials address appropriate planning for protecting the health and safety of their students from a commercial nuclear power plant accident. The petition has presented no evidence that would cause the NRC to reconsider this determination.

H. Require creation of identification cards, school attendance lists, and fingerprint records for all children who are to be transported to a relocation center, to ensure no child is left behind or is unable, due to age, to communicate his or her contact information to emergency workers.

NRC Review:

State and local governments have the responsibility for ensuring that licensed day care centers and nursery schools have mechanisms in place for maintaining child accountability. FEMA (now part of DHS), as the authority on offsite emergency planning, has determined that it is unnecessary to require that such detailed mechanisms be a component of emergency plans. The Commission finds no safety reason to justify requiring such detailed mechanisms in its regulations.

I. Require development by emergency management officials of educational materials for parents, informing them what will happen to their children in case of a radiological emergency, and where their children can be picked up after an emergency evacuation.

NRC Review:

Current NRC and FEMA requirements and guidance adequately address this specific request. FEMA's GM EV-2 (p. 2) specifies that the Emergency Alert System (EAS) notify parents of the status and location of their children in the event of an emergency. 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.

J. Require stocking of KI pills and appropriate educational materials at all day care centers and nursery schools within the 10-mile EPZ.

NRC Review:

The Commission's regulations, specifically 10 CFR 50.47b.(10), require individual states to consider using KI in the event of an emergency. The regulations require that a range of protective actions be developed for the plume exposure pathway EPZ for emergency workers and the public. In developing this range of actions, consideration was to be given to evacuation, sheltering, and, as a supplement to these, the prophylactic use of KI, as appropriate. Under this regulation, each individual state must decide whether the stockpiling of KI is appropriate for the citizens within its jurisdiction. Once a state decides to stockpile KI, it is

incumbent on that state to develop a program for distribution. This program is reviewed by FEMA (now part of DHS) under the 44 CFR 350 process. The petition did not provide information that would cause the NRC to reconsider this determination.

K. Require radiological emergency preparedness training for all day care center and nursery school employees within the 10-mile EPZ.

NRC Review:

The Commission believes that specialized training for day care center and nursery school employees is unnecessary because they would be using already established and distributed procedures for evacuation. Absent compelling information that specialized training for day care center and nursery school employees would result in significant safety benefits that justify the additional regulatory burden, the Commission finds no safety reason to justify the requested revision to 10 CFR Part 50.

L. Require listing of designated relocation centers in area phone directories, so that parents can quickly and easily find where their children will be sent in case of a radiological emergency.

NRC Review:

FEMA's GM EV-2 (pp. 2 and 4) specifies that offsite emergency plans are to identify relocation centers outside of the 10-mile EPZ for all schools, including day care centers and nursery schools. Some states list the relocation centers in telephone directories, some states identify the relocation centers in the yearly public information packages, and some states identify the relocation centers in their offsite emergency plans.[2] The Commission believes that

[2] 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).

the current publication practices are adequate.

M. Require establishment of toll-free or 911-type telephone lines, to provide information about radiological emergency plans and procedures for day care centers and nursery schools within the 10-mile EPZ.

NRC Review:

Although not required by NRC regulations or provided in FEMA guidance, all states provide a toll-free phone number in the yearly public information package where members of the public can acquire emergency preparedness information. The Commission sees no added safety benefits in revising its regulations to require something that all states are already doing.

N. Creation of written scripts for use by the local Emergency Alert System that include information about evacuation plans and designated relocation centers for day care centers and nursery schools.

NRC Review:

FEMA's GM EV-2 (p. 6) specifies that a method is to exist (e.g., EAS) for notifying day care center and nursery school parents of the status and location of their children, in the event of an emergency. FEMA (now part of DHS) has decided that it is unnecessary to incorporate such a prescriptive requirement into its regulations and guidance, which allows the off-site response organizations the flexibility to develop adequate plans and procedures that best fit their specific needs, and the needs of the affected public that they are charged with protecting. The petition provided no evidence that the current method of notification is inadequate. As a result, the Commission sees no added safety benefit in requiring a written script.

## COMMISSION EVALUATION

The evaluation of the advantages and disadvantages of the rulemaking requested by the petition with respect to the four strategic goals of the Commission follows:

1. Ensure Protection of Public Health and Safety and the Environment: The NRC staff believes that the requested rulemaking would not make a significant contribution to maintaining safety because current NRC and FEMA regulations and guidance already require inclusion of nursery schools and day care centers in state and local government offsite emergency plans. This was verified by the state governments that submitted comment letters which stated that day care centers and nursery schools are included in their offsite emergency planning and that this is not an issue requiring a change to the emergency planning regulations. As such, it is a potential compliance issue that can be resolved using the current regulatory structure.
2. Ensure the Secure Use and Management of Radioactive Materials: The requested regulatory amendments would have no impact on the security provisions necessary for the secure use and management of radioactive materials. The petition for rulemaking deals with the taking of protective actions for nursery schools and day care centers by offsite authorities, which is currently required by NRC and FEMA regulations and guidance.
3. Ensure Openness in Our Regulatory Process: The requested rulemaking would not enhance openness or public confidence in our regulatory process because the petitioners' requests raise potential issues of compliance with the existing requirements and guidance. The NRC staff does not believe that the contentions identify deficiencies in regulatory requirements. The Commission's regulations require that protective actions have been developed for the public, including day care centers and nursery schools. Existing guidance in NUREG-0654 and in GM-EV2 address the planning for this segment of the population. Appendix 4 in NUREG-0654, discusses "special facility populations." Day care centers and nursery schools fall under the definition of "special facility populations" and as such, these populations should be included in the offsite

emergency response plans. It should be noted, however, that 3000 members of the public co-signed the original petition for rulemaking. Additionally, 410 members of the public signed letters supporting the petition. This amount of public support reinforces the importance of NRC and FEMA's continued commitment to providing protection for the public in the event of an emergency which has always included day care centers and nursery schools.

4. Ensure that NRC Actions Are Effective, Efficient, Realistic and Timely: The proposed revisions would decrease efficiency and effectiveness because current NRC and FEMA regulations and guidance already adequately address the petition requests. Amending the regulations would require licensees and state and local governments to generate additional and more prescriptive information in their emergency plans, and the NRC and FEMA staffs would need to evaluate the additional information. The additional NRC staff and licensee effort would not improve efficiency or effectiveness. In addition, the NRC resources expended to promulgate the rule and supporting regulatory guidance would be significant with little return value.

5. Ensure Excellence in Agency Management: The requested rule would have no effect on the excellence in NRC management, but would increase licensee and state and local government burden by requiring the generation of additional, unnecessary, and burdensome information with little expected benefit because current NRC and FEMA regulations and guidance already adequately address the petition requests. This rulemaking would add significant burden on a national scale in order to address a potential local compliance issue.

## REASON FOR DENIAL

The Commission is denying the petition for rulemaking (PRM-50-79) submitted by

Mr. Lawrence T. Christian, et al. Current NRC requirements and NRC and FEMA guidance, provide reasonable assurance of adequate protection of all members of the public, including children attending day care centers and nursery schools, in the event of a nuclear power plant incident. Many of the specific requests of the petitioner are either already covered by regulations and/or guidance documents or are inappropriate for inclusion in NRC regulations due to their very prescriptive nature. The Commission does believe, however, that information obtained during the review of the petition does raise questions about local implementation of relevant requirements and guidelines. Accordingly, the 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.[3] 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.

For these reasons, the Commission denies PRM-50-79.

Dated at Rockville, Maryland, this 1st day of August, 2006.

For the Nuclear Regulatory Commission.

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[3] 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 day care centers. No deficiencies were identified by FEMA during the exercise. FEMA's final report on the exercise was issued on August 4, 2005.

Annette L. Vietti-Cook,
Secretary of the Commission.