

May 6, 1982

C O R R E C T I O N   N O T I C E

TO ALL HOLDERS OF

SECY-82-185 - FINAL AMENDMENT TO 10 CFR PART 50 AND TO APPENDIX E:  
MODIFICATION TO EMERGENCY PREPAREDNESS REGULATIONS  
RELATING TO LOW POWER OPERATION

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May 6, 1982

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May 3, 1982

SECY-82-185



## RULEMAKING ISSUE

For: The Commissioners (Affirmation)

From: William J. Dircks  
Executive Director for Operations

Subject: FINAL AMENDMENT TO 10 CFR PART 50 AND TO APPENDIX E:  
MODIFICATION TO EMERGENCY PREPAREDNESS REGULATIONS RELATING TO  
LOW POWER OPERATION

Purpose: To obtain Commission approval for publication of final amendment  
to the regulations in the Federal Register (Enclosure 1).

Category: This paper covers a minor policy matter, but one which has received  
a significant amount of public attention and comment.

Background: On September 17, 1981, SECY-81-554 was forwarded to the Commission  
for approval. This paper took the position that an emergency pre-  
paredness exercise is part of the preoperational inspection pro-  
cess and is required prior to operation above 5% of rated power  
but not required for a Licensing Board, Appeal Board or Commission  
licensing decision. SECY-81-554A and a December 11, 1981 OGC memo  
modified the original Commission paper. The proposed rule change  
was approved by the Commission and published for comment in the  
Federal Register on December 15, 1981 (46 FR 61134). The original  
public comment period ended on January 14, 1982 but was extended  
to January 28, 1982 as a result of requests from the public,  
including the Governor of New Hampshire.

Likewise, on September 30, 1981, SECY-81-570 was forwarded to  
the Commission proposing to amend the regulations to provide  
that for issuance of operating licenses authorizing only fuel  
loading and low power operation (up to 5% of rated power), no  
NRC or Federal Emergency Management Agency (FEMA) review, find-  
ings, and determinations concerning the state of or adequacy of  
offsite emergency preparedness shall be necessary. The NRC

Contact:  
Mike Jamgochian  
443-5942

3, 1982



SECY-82-185

## ADJUDICATORY ISSUE (Affirmation)

For: The Commissioners

From: William J. Dircks  
Executive Director for Operations

Subject: FINAL AMENDMENT TO 10 CFR PART 50 AND TO APPENDIX E:  
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review of the onsite plan would include an assessment of those offsite elements which are necessary to evaluate the applicant's response mechanism. On October 15, 1981, OGC forwarded to the Commission a proposed modification to SECY-81-570. The proposed rule change was approved by the Commission and published for comment in the Federal Register on December 15, 1981 (46 FR 61132). The original public comment period for this notice ended on January 29, 1982 but was extended to February 12, 1982 also as a result of requests from the public.

Discussion  
On 46 FR 61134  
(SECY-81-554)

This proposed rule change is considered by the Commission as clarifying in nature. It proposes that 10 CFR 50.47(a)(1) be modified to clarify that the findings on emergency planning required prior to license issuance are predictive in nature and need not reflect the actual state of preparedness at the time the finding is made. 10 CFR 50.47(a)(2) would be amended to emphasize the predictive nature of the review and to provide that licensing decisions need not include the results of an exercise. The Federal Register notice stated that preparedness, "...connotes the actual state of implementation, is important during the life of the plant and will be treated as an operational inspection matter." The rules would require that a full scale exercise be conducted before operation above 5% of rated power and periodically thereafter.

Discussion  
on 46 FR 61132  
(SECY-81-570)

This proposed rule change provides that in order to grant a low power license, only a finding as to the adequacy of onsite emergency planning and preparedness is required. That is, neither FEMA nor NRC would be required to evaluate the adequacy and capability of offsite preparedness organizations and plans prior to issuance of a low power license. While the proposed rule would eliminate the need to have any NRC or FEMA review, findings, or determinations on the adequacy of offsite agencies' emergency planning and preparedness, the NRC review of the licensees' onsite response mechanism will necessarily include aspects of some offsite elements; communications; notification; assistance agreements with local law enforcement, fire protection, and medical organizations; and the like. Some examples, but not an exclusive list, where review of an applicant's emergency plan would involve aspects of some offsite elements may be found in pertinent portions of 10 CFR 50.47(b)(3), (5), (6), (9), and (12).

Public Comments:

An unusually large public response to the proposed rule changes was received; 40 letters commenting on the 46 FR 61134 proposed rule change and 66 letters commenting on the 46 FR 61132 proposed rule change. Many letters commented on both issues within the same letter. For 46 FR 61134, 27 letters oppose the rule change while 11 letters favor the rule change. For 46 FR 61132, 43 letters oppose the rule change, while 18 letters favor the rule change. For both rule changes, those commenters favoring

the rule changes are typically utilities, legal firms and consulting firms representing utilities, and one State health department. Commenters opposing the rule changes included many private citizens and representatives of large segments of the population. A few examples are: Attorney General of Massachusetts, Members of the New Hampshire House of Representatives, Attorney General of New Hampshire, Union of Concerned Scientists, and a number of local governments throughout the country. A complete listing of comment letters is provided as Enclosure 2.

All of the significant comments favoring the rule changes basically reiterated the Commission's rationale for promulgation of the proposed rule changes that was put forth in the Federal Register Notices, 46 FR 61134 and 46 FR 61132.

All of the significant issues against the rule changes that are identified in the comment letters are specifically addressed in the attached Federal Register notice (Enclosure 1). The more significant adverse comments can be summarized as follows:

1. The NRC's credibility was so undermined by the handling of the TMI accident that the Commission should take pains to avoid even the appearance of relaxing safety standards. By relaxing the current emergency preparedness regulations, far more than the prestige of the agency or the commissioners is at stake; indeed, it is believed that the credibility of NRC is a vital component of emergency preparedness. When the next serious accident occurs, many lives may be saved if people have enough faith in the dedication and truthfulness of the NRC. As things stand, substantial enough segments of the population are still alienated and cynical in their feelings about the agency to interfere seriously with the workability of any plans for managing an emergency.
2. During low power testing there are higher risks due to unfamiliarity of the plant operators with their particular plant and due to undiscovered design and construction defects.
3. The rule changes would eliminate public participation in the review and assessment of exercises before a licensing board.
4. These rule changes would undermine public confidence in the adequacy of emergency planning, safe operation of the plant and the licensing process.
5. Unlike some of the more technical issues, emergency planning is a subject upon which the average citizen is knowledgeable and can make a valuable contribution to the licensing proceedings. This is an important opportunity for public participation; eliminating this consideration from licensing

decisions in effect removes this vital experimental evidence from public scrutiny.

Judging by the majority of comments received, a significant segment of the public perceives that the rule changes are not in the public interest and that their promulgation will adversely affect the public health and safety. The staff has evaluated all public comments, and has also fully considered the risks of operating a nuclear power reactor at low power. The risks of operating a power reactor at low power are significantly lower than the risks of operating at full power because: first, the fission product inventory during low power testing is much less than during higher power operation due to the low level of reactor power and short period of operation. Second, at low power there is a significant reduction in the required capacity of systems designed to mitigate the consequences of accidents compared to the required capacities under full power operation. Third, the time available for taking actions to identify accident causes and mitigate accident consequences is much longer than at full power. This means the operators should have sufficient time to prevent a radioactive release from occurring. In the worst case, the additional time available (at least 10 hours) even for a postulated low likelihood sequence, which eventually results in release of the fission products accumulated at low power into the containment, would allow adequate precautionary actions to be taken to protect the public near the site.

On balance, the staff has concluded that the proposed rule changes are justifiable and will enhance the efficiency of the licensing process without adversely affecting the public health and safety, and, therefore, should be published as final rule changes. The staff recommends that one minor modification be made to the proposed rule changes published on December 15, 1981 (46 FR 61134 and 61132). This modification, which was recommended by a utility, is to specify the use of the standards in 50.47(b) 8 and 15 for evaluating the coordination of offsite and onsite emergency preparedness. This change is discussed in the supplemental information section of the proposed Federal Register notice (Enclosure 1).

Cost Estimate:

The staff anticipates cost savings to the NRC, to licensees and State and local governments that are affected by this rule change.

Recommendations:


1. APPROVE for publication in the Federal Register a notice of final amendments (Enclosure 1) to 10 CFR §§ 50.47, 50.54 and Appendix E.
2. NOTE:
  - a. That appropriate Congressional committees will be notified of the final amendments to the regulations (Enclosure 3).

- b. That the ACRS is being informed of the final amendments to the regulations.
- c. That, pursuant to 10 CFR § 51.5(d)(3) of the Commission's regulations, an environmental impact statement, negative declaration, or environmental impact appraisal need not be prepared in connection with the subject final amendment because there is no substantive or significant environmental impact.
- d. That the amendments are being made effective upon publication in the Federal Register because they "relieve a restriction" and therefore they fall under exception (d) (1) of Section 553 of the Administrative Procedure Act.
- e. That the Federal Register notice contains a statement that the NRC certifies that these final rules will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act of 1980, § 605(b).
- f. That the Federal Register notice contains a statement that, pursuant to the Paperwork Reduction Act of 1980, the NRC has made a preliminary determination that the final amendments do not impose new recordkeeping, information collection, or reporting requirements.
- g. That the Federal Register notice will be sent to affected applicants, licensees, and persons that commented on the proposed rule.
- h. That a public announcement of the final rule will be made.
- i. Because these amendments are of a relieving nature, no value/impact statement is necessary.



Sunshine Act: Recommended consideration at an open meeting.

Scheduling: For early consideration.



William J. Dircks  
Executive Director for Operations

Enclosures:

1. Federal Register Notice of Final Amendment to 10 CFR §§ 50.47, 50.54 and Appendix E
2. Listing of Commentors on Proposed Rulemaking
3. Draft Congressional Letter

Commissioners' comments (or consent) should be provided directly to the Office of the Secretary by c.o.b. Wednesday, May 19, 1982.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT May 12, 1982, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for Affirmation at an Open/Closed Meeting during the Week of May 24, 1982. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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ENCLOSURE ONE



NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Emergency Planning and Preparedness

AGENCY: U. S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to clarify: (1) that emergency preparedness exercises are part of the preoperational inspection and thus required prior to operation above 5% of rated power, but not for a Licensing Board, Appeal Board, or Commission licensing decision; and (2) that for issuance of operating licenses authorizing only fuel loading and low power operation (up to 5% of rated power), no NRC or Federal Emergency Management Agency (FEMA) review, findings and determinations concerning the state or adequacy of offsite emergency preparedness shall be necessary.

EFFECTIVE DATE: [Insert date of publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT: Michael T. Jamgochian, Human Factors Branch, Office of Nuclear Regulatory Research, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555 (telephone (301)443-5942).

SUPPLEMENTARY INFORMATION: On December 15, 1981, the Commission published in the Federal Register two proposed rule changes (46 FR 61132 and

46 FR 61134). The proposed rule change in 46 FR 61134 was considered by the Commission as clarifying in nature. It proposed that 10 CFR 50.47(a)(1) be modified to clarify that the findings on emergency planning required prior to license issuance are predictive in nature and need not reflect the actual state of preparedness at the time the finding is made. The amendment to 10 CFR 50.47(a)(2) was proposed to emphasize the predictive nature of the review and to provide that licensing decisions need not include the results of an exercise. The Commission noted that preparedness connotes the actual state of implementation, is important during the life of the plant and should be treated as an operational inspection matter. The proposed rule change would require that a full-scale exercise be conducted before operation above 5% of rated power and periodically thereafter.

The proposed rule change in 46 FR 61132 provided that in order to grant a low power license, only a finding as to the adequacy of onsite emergency planning and preparedness is required. That is, neither FEMA nor NRC must have evaluated the adequacy and capability of offsite preparedness organizations and plans prior to issuance of a low power license. While the proposed rule would eliminate the need to have any NRC or FEMA review, findings, or determinations on the adequacy of offsite agencies' emergency planning and preparedness, the NRC review of the licensees' onsite response mechanism would necessarily include aspects of some offsite elements: communications, notification, assistance agreements with local law enforcement, fire protection, and medical organizations, and the like. Some examples, but not an exclusive list, where review of an applicant's emergency plan would involve aspects of

some offsite elements may be found in pertinent portions of 10 CFR 50.47(b)(3), (5), (6), (9), and (12).

Extensive comments were received, all of which were evaluated and considered in developing the final rule.

Summary of Public Comments: The Commission received 40 letters commenting on the 46 FR 61134 proposed rule change and 66 letters commenting on the 46 FR 61132 proposed rule change. Many letters commented on both issues within the same letter. For 46 FR 61134, 27 letters opposed the rule change while 11 letters favored the rule change. In 46 FR 61132, 43 letters opposed the rule change, while 18 letter favored the rule change. For both rule changes, commenters favoring the rule changes were typically utilities, legal firms and consulting firms representing utilities, and one State health department. Commenters opposing the rule changes included many private citizens and representatives of large segments of the population, such as the Attorney General of Massachusetts, Members of the New Hampshire House of Representations, the Attorney General of New Hampshire, the Union of Concerned Scientists, and a number of local governments throughout the country.

All of the significant comments favoring the rule changes basically reiterated the Commission's rationale for promulgation of the proposed rule changes that was put forth in the Federal Register Notices, 46 FR 61134 and 46 FR 61132.

The following major issues against changing the regulations were raised in specific comments received. These major issues reflect the areas of concern of many commenters.

ISSUE 1: The NRC's credibility was so undermined by the handling of the TMI accident that the Commission should take pains to avoid even the appearance of relaxing safety standards. By relaxing the current emergency preparedness regulations, far more than the prestige of the agency or the Commissioners is at stake; indeed, it is believed that the credibility of NRC is a vital component of emergency preparedness. When the next serious accident occurs, many lives may be saved if people have enough faith in the dedication and truthfulness of the NRC. As things stand, substantial segments of the population are still alienated and cynical in their feelings about the agency to interfere seriously with the workability of any plans for managing an emergency.

COMMISSION RESPONSE: When the Commission published the upgraded emergency preparedness regulations in August of 1980, the subject of low power operating licenses was not addressed. At that time the Commission did not differentiate as to what emergency planning requirements would be applicable to the period of fuel loading and low power testing. The Commission has now focused on the risks associated with this level of operation and has chosen a level of emergency preparedness appropriate to assure the health and safety of the public at that stage. In doing so, the Commission does not alter the high standards applicable to the review of emergency preparedness at full power.

ISSUE 2: During low power testing there are higher risks due to unfamiliarity of the plant operators with their particular plant and due to undiscovered design and construction defects.

COMMISSION RESPONSE: The Commission agrees that there may be a slightly higher risks due to the plant operators having less experience with the plant at this stage and with a potential for undiscovered design and construction defects. However, in the Commission's view this risk is significantly outweighed by several other factors. First, the fission product inventory during low power testing is much less than during higher power operation due to the low level of reactor power and short period of operation. Second, at low power there is a significant reduction in the required capacity of systems designed to mitigate the consequences of accidents compared to the required capacities under full power operation. Third, the time available for taking actions to identify accident causes and mitigate accident consequences is much longer than at full power. This means the operators should have sufficient time to prevent a radioactive release from occurring. In the worst case, the additional time available (at least 10 hours) even for a postulated low likelihood sequence, which could eventually result in release of the fission products accumulated at low power into the containment, would allow adequate precautionary actions to be taken to protect the public near the site. Weighing all risks involved, the Commission has determined that the degree of emergency preparedness necessary to provide adequate protection of the public health and safety is significantly less than that required for full power operation.\*

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\* The level of risk associated with low-power operation has been estimated by the staff in several recent operating license cases: Diablo Canyon, Docket Nos. 275-OL, 323-OL, San Onofre, Docket Nos. 361-OL, 362-OL, and LaSalle, Docket Nos. 373-OL, 374-OL. In each case the Safety Evaluation Report concluded that low-power risk is several orders of magnitude less than full-power risk. These findings support the general conclusion in the text that a number of factors associated with low-power operation imply greatly reduced risk compared with full-power.



ISSUE 3: The rule changes would eliminate public participation in the review and assessment of exercises before a licensing board.

COMMISSION RESPONSE: The rule changes do not eliminate public participation in the exercises and in the review and assessment critiques held after the exercise is conducted. The rule changes clarify that the emergency preparedness exercises are not required for a Licensing Board, Appeal Board or Commission licensing decision. Exercises will still be required before actual power above 5% and commercial operation. The conduct of full-scale exercises early enough in the licensing process to permit the outcome of the exercises to be fully litigated at the hearing is premature. Such exercises are best held at a later time, when the operating and management staff of the plant--who are central figures in an exercise--are in place and trained in emergency functions. The Commission believes that, while the actual exercise is not an issue in a hearing under these rules (except to the extent that an outline for the exercise may be involved), the exercise will be held before full power and all significant deficiencies will be properly addressed.

ISSUE 4: These rule changes would undermine public confidence in the adequacy of emergency planning, safe operation of the plant and the licensing process.

COMMISSION RESPONSE: As the Commission noted in the Federal Register notice which announced the upgraded emergency planning regulations on August 19, 1980 (45 FR 55403) "The [TMI] accident also showed clearly that onsite conditions and actions, even if they do not cause significant



offsite radiological consequences, will affect the way the various State and local entities react to protect the public from any dangers associated with the accident. In order to discharge effectively its statutory responsibilities, the Commission must know that proper means and procedures will be in place to assess the course of an accident and its potential severity, that NRC and other appropriate authorities and the public will be notified promptly, and that adequate protective actions in response to actual or anticipated conditions can and will be taken."

Given that no change is envisioned in the caliber of reviews for full power licenses, and indeed, more resources in theory would be available. The Commission believes that the final rule changes announced herein do not change this responsibility or diminish in any respect the protection of the public health and safety. While the Commission understands the feelings expressed by these commenters, the Commission wants to state its continued commitment to the adequacy of emergency planning, safe operation of the plant and in the licensing process. These rule changes should not be cause for concern about this commitment.

ISSUE 5: Unlike some of the more technical issues, emergency planning is a subject upon which the average citizen is knowledgeable and can make a valuable contribution to the licensing proceedings. This is an important opportunity for public participation. Eliminating this consideration from licensing decisions in effect removes this vital experimental evidence from public scrutiny.

COMMISSION RESPONSE: The proposed rule does not eliminate emergency planning as an issue at the operating license hearings. First, the

applicant's plan is an available issue in the hearing process prior to issuance of an operating license. Second, parties to the licensing proceeding may seek, under the Commission's rules, to reopen a concluded hearing if serious deficiencies appear in an exercise. Third, any member of the public may file a petition pursuant to 10 CFR 2.206 requesting that issuance of a license be delayed pending resolution of emergency planning issues. Finally, it should be recalled that the full-scale exercises themselves involve participation by local and State governments. Both the NRC and FEMA attempt to make sure that all local and regional concerns expressed by representatives of these governments are fully addressed, and that any deficiencies brought to light are remedied before a full-power license is issued. The underlying feelings expressed by these comments, however, are addressed in the Commission Responses to Issues 3 and 4.

ISSUE 6: The public knowledge that no off-site protection exists could cause chaos in the event of an incident during fuel loading or low power testing.

COMMISSION RESPONSE: Prior to issuing an operating license authorizing low power testing and fuel loading, the NRC will review the following offsite elements of the applicant's emergency plan:

(a) § 50.47(b)(3) Arrangements for requesting and effectively using assistance resources have been made, arrangements to accommodate State and local staff at the licensee's near-site Emergency Operations Facility

have been made, and other organizations capable of augmenting the planned response have been identified.

(b) § 50.47(b)(5) Procedures have been established for notification, by the licensee, of State and local response organizations and for notification of emergency personnel by all organizations; the content of initial and followup messages to response organizations and the public has been established; and means to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone have been established.

(c) § 50.47(b)(6) Provisions exist for prompt communications among principal response organizations to emergency personnel and to the public.

(d) § 50.47(b)(8) Adequate emergency facilities and equipment to support the emergency response are provided and maintained.\*

(e) § 50.47(b)(9) Adequate methods, systems, and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency condition are in use.

(f) § 50.47(b)(12) Arrangements are made for medical services for contaminated injured individuals.

(g) § 50.47(b)(15) Radiological emergency response training is provided to those who may be called on to assist in an emergency.\*

Knowing that the above elements of the applicants emergency plan have been reviewed by NRC should assure the public that, for low power testing and fuel loading, adequate protective measures could and would be taken in the event of an accident.

\*Added in response to public comment.

ISSUE 7: The proposed rule changes are fundamentally not in the best interest of the public health and safety but obviously in the interest of the utilities.

COMMISSION RESPONSE: As explained in previous Responses, the Commission is convinced that the rule changes will not compromise the health and safety of the public. The Commission considers that the rule changes provide flexibility in its licensing procedures, thereby meeting its obligation to the public to conduct its business in a timely and efficient manner. This obligation includes the establishment of an efficient licensing process, while not adversely effecting the public health and safety.

ISSUE 8: ~~The proposed rule changes contradict previous TMI policy statements.~~

COMMISSION RESPONSE: In developing the upgraded emergency preparedness regulations (45 FR 55402 dated August 19, 1980) one of the policy statements that the Commission made was "that onsite and offsite emergency preparedness as well as proper siting and engineered design features are needed to protect the health and safety of the public [and] as the Commission reacted to the accident at Three Mile Island, it became clear that the protection provided by siting and engineered design features must be bolstered by the ability to take protective measures during the course of an accident."

This rulemaking will in no way deviate from previous policy statements but in fact will add flexibility and efficiency to the licensing process.

ISSUE 9: Use §50.47(b)8 and §50.47(b)15 in evaluating the coordination of offsite and onsite emergency preparedness. These standards require that:

(a) (8) Adequate emergency facilities and equipment to support the emergency response are provided and maintained, and

(b) (15) Radiological emergency response training is provided to those who may be called on to assist in an emergency.

COMMISSION RESPONSE: The Commission agrees with this comment. See Commission Response to Issue #6.

ISSUE 10: The rule changes effectively exclude the public from the decisionmaking process on a matter of primary public concern, and create apprehension in the public mind as to whether "preparedness" will be a reality even after a full-scale exercise before operation above 5% of rated power. The public is unlikely to be granted a special hearing, before full-power operation is granted a utility, in order to assess the actual state of preparedness.

COMMISSION RESPONSE: It is true that special hearings will not, in a typical case, be held following the full-scale exercise. The Commission does not intend, however, to authorize issuance of a full-power license



following a seriously defective full-scale exercise. The Commission's regulations, 10 CFR 50.47(a)(1), clearly require that an operating license may not be issued unless the NRC finds that the public health and safety will be protected in a radiological emergency. A successful full-scale offsite exercise is at the core of this finding. While minor problems can be left to the post-license period, major difficulties will be resolved before any reactor is permitted to exceed 5% power.

ISSUE 11: No rationale sustains the requirement of offsite emergency preparedness for small research reactors possessing a fission product inventory equivalent to that generated up to 5% by a large reactor while eliminating offsite emergency preparedness for the large reactor.

COMMISSION RESPONSE: Although research reactors present an inherently smaller risk than power reactors, they do not possess the accident mitigation features (e.g., large containments) required for power reactors. In addition, research reactors are often located in high population density areas. It is therefore prudent to have an offsite emergency plan for these reactors.

SUMMARY: As noted by the above comments, a significant segment of the public perceives that the rule changes are being made not in the public interest and that their promulgation will adversely affect the public health and safety. The Commission has evaluated all public comments, and has also fully considered the risks of operating a nuclear power reactor at low power. The risks of operating a power reactor at low power are significantly lower than the risks of operating at full power



because: first, the fission product inventory during low power testing is much less than during higher power operation due to the low level of reactor power and short period of operation. Second, at low power there is a significant reduction in the required capacity of systems designed to mitigate the consequences of accidents compared to the required capacities under full power operation. Third, the time available for taking actions to identify accident causes and mitigate accident consequences is much longer than at full power. This means the operators should have sufficient time to prevent a radioactive release from occurring. In the worst case, the additional time available (at least 10 hours) even for a postulated low likelihood sequence, which eventually results in release of the fission products accumulated at low power into the containment, would allow adequate precautionary actions to be taken to protect the public near the site. On balance, the Commission has concluded that the rule changes are technically justifiable and will enhance the efficiency of the licensing process, without adversely affecting the public health and safety and therefore should be promulgated.

#### National Environment Policy Act Consideration

Pursuant to 10 CFR § 51.5(d)(3) of the Commission's regulations, an environmental impact appraisal need not be prepared in connection with the subject final amendment because there is no substantive or significant environmental impact.

#### Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605(b), the Commission hereby certifies that this rule will not, if

promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule changes concern a clarification of the elements and findings necessary for the issuance of an operating license for nuclear power plants licensed pursuant to Section 103 and 104b of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2133, 2134b. The electric utility companies owning and operating these nuclear power plants are dominant in their service areas, and do not fall within the definition of a small business found in Section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR Part 121. Accordingly, there is no significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980.

Paperwork Reduction Act Statement

Pursuant to the provisions of the Paperwork Reduction Act of 1980 (Pub.L 96-511), the NRC has made a preliminary determination that these rule changes do not impose new recordkeeping, information collection, or reporting requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 552 and 553 of title 5 of the United States Code, notice is hereby given that the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 50 is published as a document subject to codification. These rules are made immediately effective because restrictions on applicants are being relieved.

PART 50 - DOMESTIC LICENSING OF PRODUCTION  
AND UTILIZATION FACILITIES

The authority citation for Part 50 reads as follows:

AUTHORITY: Sections 103, 104, 161, 182, 183, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246 (42 U.S.C. 5841, 5842, 5846), unless otherwise noted. Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), § 50.54(i) issued under sec. 161i, 68 Stat. 949 (42 U.S.C. 2201(i)); §§ 50.70, 50.71, and 50.78 issued under sec. 161, 68 Stat. 950, as amended; (42 U.S.C. 2201(o)), and the laws referred to in Appendices.

1. In § 50.47, paragraphs (a)(1) and (2) are revised, the introductory text to paragraph (b) is revised, paragraph (c)(1) is revised, and a new paragraph (d) is added. All revisions to read as follows:  
§ 50.47 Emergency plans.

(a)(1) Except as provided in paragraph (d) below,\* no operating license for a nuclear power reactor will be issued unless a finding is made by NRC that [~~the state of onsite and offsite preparedness provides~~] there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

\*These rule changes have been typed in comparative text, comparing the changes with the final regulations that were published in August 1980. These rule changes have not been changed from the published proposed rule changes (December 1981).

(2) The NRC will base its finding on a review of the Federal Emergency Management Agency (FEMA) findings and determinations as to whether State and local emergency plans are adequate and whether there is reasonable assurance that they [capable-of-being] can be implemented, and on the NRC assessment as to whether the applicant's onsite emergency plans are adequate and whether there is reasonable assurance that they [capable-of-being] can be implemented. A FEMA finding will primarily be based on a review of the plans. Any other information already available to FEMA may be considered in assessing whether there is reasonable assurance that the plans can be implemented. In any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on questions of adequacy and implementation capability. Emergency preparedness exercises (required by paragraph (b)(14) of this section and Appendix E, Section F of this part) are part of the operational inspection process and are not required for any initial licensing decision.

(b) The onsite and, except as provided in paragraph (d) below, offsite emergency response plans for nuclear power reactors must meet the following standards:

\* \* \* \* \*

(c)(1) Failure to meet the applicable standards set forth in paragraph (b) of this section may result in the Commission declining to issue an Operating License, however, the applicant will have an opportunity to demonstrate to the satisfaction of the Commission that deficiencies in the plans are not significant for the plant in question, that adequate

interim compensating actions have been or will be taken promptly, or that there are other compelling reasons to permit plant operation.

\* \* \* \* \*

(d) Notwithstanding the requirements of paragraph (a) and (b) above, no NRC or FEMA review, findings, or determinations concerning the state of offsite emergency preparedness or the adequacy of and capability to implement State and local offsite emergency plans are required prior to issuance of an operating license authorizing only fuel loading and/or low power operations (up to 5% of the rated power). Insofar as emergency planning and preparedness requirements are concerned, a license authorizing fuel loading and/or low power operation may be issued after a finding is made by the NRC that the state of onsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The NRC will base this finding on its assesemnt of the applicant's emergency plans against the pertinent standards in paragraph (b) above and Appendix E of this Part.

2. § 50.54(q) is revised to read as follows:

§ 50.54 Conditions of licenses.

\* \* \* \* \*

(q) A licensee authorized to possess and/or operate a nuclear power reactor shall follow and maintain in effect emergency plans which meet the applicable standards in § 50.47(b) and the applicable requirements in Appendix E to this part. A licensee authorized to possess and/or operate a research reactor or a fuel facility shall follow and maintain in effect emergency plans which meet the requirements in Appendix E to



this part. The nuclear power reactor licensee may make changes to these plans without Commission approval only if such changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the applicable standards of § 50.47(b) and the applicable requirements of Appendix E to this part. The research reactor licensee and/or the fuel facility licensee may make changes to these plans without Commission approval only if such changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the requirements of Appendix E to this part. Proposed changes that decrease the effectiveness of the approved emergency plans shall not be implemented without application to and approval by the Commission. The licensee shall furnish 3 copies of each proposed change for approval; and/or if a change is made without prior approval, 3 copies shall be submitted within 30 days after the change is made or proposed to the Administrator of the appropriate NRC regional office specified in Appendix D, 10 CFR Part 20, with 10 copies to the Director of Nuclear Reactor Regulation, or, if appropriate, the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission. Washington, D.C. 20555.

\* \* \* \* \*

Appendix E [Amended]

3. Section I of Appendix E to 10 CFR Part 50 is revised to read as follows [footnotes unchanged]:



## I. Introduction

Each applicant for a construction permit is required by § 50.34(a) to include in the preliminary safety analysis report a discussion of preliminary plans for coping with emergencies. Each applicant for an operating license is required by § 50.34(b) to include in the final safety analysis report plans for coping with emergencies.

This appendix establishes minimum requirements for emergency plans for use in attaining an acceptable state of emergency preparedness. These plans shall be described generally in the preliminary safety analysis report and submitted as part of the final safety analysis report.

The potential radiological hazards to the public associated with the operation of research and test reactors and fuel facilities licensed under 10 CFR Parts 50 and 70 involve considerations different than those associated with nuclear power reactors. Consequently, the size of Emergency Planning Zones<sup>2</sup> (EPZs) for facilities other than power reactors and the degree to which compliance with the requirements of this section and sections II, III, IV, and V as necessary will be determined on a case-by-case basis.<sup>3</sup>

Notwithstanding the above paragraphs, in the case of an operating license authorizing only fuel loading and/or low power operations up to 5% of rated power, no NRC or FEMA review, findings, or determinations concerning the state of offsite emergency preparedness or the adequacy of and the capability to implement State and local offsite emergency plans, as defined in this Appendix, are required prior to the issuance of such a license.

4. Section F of Appendix E to 10 CFR Part 50, item (b) is revised to read as follows:

F. Training

\* \* \* \* \*

b. For each site at which a power reactor is located for which the first operating license for that site is issued after the effective date of this amendment, within one year before issuance of the first operating license for full power, and prior to operation above 5% of rated power of the first reactor, which will enable each State and local government within the plume exposure pathway EPZ and each State within the ingestion pathway EPZ to participate.

\* \* \* \* \*

Dated at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_,  
1982

For the Nuclear Regulatory Commission.

\_\_\_\_\_  
Samuel J. Chilk  
Secretary of the Commission

ENCLOSURE TWO

#1	Daniel F. Read Environmental Law Project School of Law, 064-A University of North Carolina Chapel Hill, North Carolina 27514	Against
#2	William Marston, Chairman Board of Selectmen Town of Hampton Falls New Hampshire 083844	Against
#3	Juanita Ellis, President Citizens Assn for Sound Energy 1426 S. Polk Dallas, Texas 75224	Against
#4	Arvid & Shirley Gustayson Exeter Road Hampton Falls, New Hampshire	Against
#5	Hugh J. Gallen, Governor State of New Hampshire State House Concord, New Hampshire 03301	Extend Comment Period
#6	Jane Doughty Sea Coast Anti-Polution League 5 Market Street Portsmouth, New Hampshire 03801	Extend Comment Period
#7	LeBoeuf, Lamb, Leiby & MacRae 140 Broadway New York, New York 10005	For
#8	Shaw, Pittman, Potts & Trowbridge 1800 M Street NW Washington, DC 20036	For
#9	Susan L Hiatt 8275 Munson Road Mentor, Ohio 44060	Against
#10	Dr. Fred Millar, Director Nuclear & Hazardous Materials Transportation Project Environmental Policy Institute 317 Pennsylvania Ave SE Washington, DC 20003	Against



#11	Jo Ann Shotwell Assistant Attorney General The Commonwealth of Massachusetts	Against
#12	E. Tupper Kinder The Attorney General State of New Hampshire Concord, New Hampshire 03301-6397	Against
#13	Catherine Quigg, Research Director Pollution & Environmental Problems Box 309 Palatine, Illinois 60067	Against
#14	Edward J. Bonah, Jr. Office of Selectmen South Hampton, New Hampshire	Against
#15	David K. Lacker, Chief Bureau of Radiation Control Texas Department of Health Austin, Texas 78756	For
#16	Members, New Hampshire House of Representatives	Against
#17	<del>Elizabeth Dolly Weinhold 3 Godfrey Avenue Hampton, New Hampshire 03842</del>	<del>Against</del>
#18	Wells Eddeleman 325 E. Trinity Avenue Durham, North Carolina 27701	Against
#19	Marvin I. Lewis 6504 Bradford Terrace Philadelphia, Pennsylvania 19149	Against
#20	Mrs David G. Grey The Indiana Sassafras Audubon Society 2625 S. Smith Road Bloomington, Indiana 47401	Against
#21	Mark P. Ocavage, President Floridians United for Safe Energy 1200 S.W. 110th Avenue Miami, Florida 33176	Against
#22	Susan L. Hiatt 8275 Musona Road Mentor, Ohio 44060	Against



#23	Bruce W. vonZellen Ph.D. Professor Northern Illinois University Department of Biological Sciences DeKalb, Illinois 60115	Against
#24	Susan Merrill 11 Shaver Avenue Shavertown, Pennsylvania 18708	Against
#25	Stephen Cook New Bedford Safe Energy Alliance 745 Kempton Street New Bedford, Massachusetts 02740	Against
#26	S. W. Shields Public Service Indiana P. O. Box 190 New Washington, Indiana	For
#27	Jesse L. Riley Sherra Club Nuclear SubCommitte 854 Henley Place Charlotte, North Carolina 28207	Against
#28	Richard L. Russman 14 Center Street Exeter, New Hampshire 03833	Against
#29	Donald C. Frisco, Chairman Coalition for Nuclear Power Postponement 2612 East Robino Drive Wilmington, Delaware 19808	Against
#30	Scott Robinson 2836 Route 45 North Rock Creek, Ohio 44084	Against
#31	Juanita Ellis Citizens Assn. For Sound Energy 1426 S. Polk Dallas, Texas 75224	Against
#32	W. G. Counsel Senior Vice President P. O. Box 270 Hartford, Connecticut 06101	For

#33	Betty Johnson League of Women Voters of Rockford Illinois 1907 Stratford Court Rockford, Illinois 61107	Against
#34	Richard Hermans Safe Energy Coalition of New York State P. O. Box 495 Millerton, New York	Against
#35	Mrs Lea M. Csala 356 So. River Street Wilkes-Barre, Pennsylvania 18702	Against
#36	Allen L. Legendre, Jr. Seabrook Station 1671 Worcester Road Framingham, Massachusetts 01701	For
#37	Dorothy Powers League of Women Voters of the U.S. 1730 M Street N.W. Washington, DC 20036	Against
#38	A. E. Scherer C-E Power Systems Combustion Engineering Inc Windsor, Connecticut 06095	For
#39	John A. Bernard Citizens Task Force P. O. Box 326 Chapel Hill, North Carolina 27514	For
#40	John M. Simpson Attorney at Law Suite 110, 4400 Johnson Drive Shawnee Mission, Kansas 66205	Against
#41	James A. Beoletto Southern California Edison Co. Rosemead, California 91770	For
#42	New York Public Interest Res. Group New York, New York	Against
#43	Wayne Prospect, Suffolk County Legislature Deer Park, New York 11729	Against

#44	Patricia E. Blubaugh 819 Hemsdale Road Cleveland Heights, Ohio 44112	Against
#45	L. O. DelGeorge Commonwealth Edison Chicago, Illinois 60690	For
#46	Mary Sinclair Great Lakes Energy Alliance 5711 Summerset Drive Midland, MI 48640	Against
#47	Gerard J. Rubinsowski 3310 Brookmeade Drive Rolling Meadows, Illinois 60008	Against
#48	Karen McManus Delaware Safe Energy Coalition P. O. Box 4531 Neward, Delaware, 19711	Against
#49	Aaron Goldman 4723 Sandia Los Alamos, New Mexico 87544	N/A
#50	D. Clark Graff Middle South Services Inc P. O. Box 61000 New Orleans, Louisiana 70151	For
#51	James W. Cook Consumers Power Co. 1945 West Parnall Road Jackson, MI 49201	For
#52	Philip A. Crane, Jr. Pacific Gas & Electric Co. San Francisco, California 94120	For
#53	Judith A. Dorsey Law Offices 1315 Walnut Street Philadelphia, Pennsylvania 19197	Against
#54	G. D. Bouchey Washington, Public Power Supply System Richland, Washington 99352	For
#55	Jo Ann Shotwell Office of Attorney General Boston, Massachusetts 02108	

#56	Jane Doughty Seacost & Anta - Pollution League 5 Market Street Portsmouth, New Hampshire 03801	Against
#57	Steven C. Sholly Union of Concerned Scientists Dupont Circle, Washington, DC	Against
#58	Alan L. Hausman 358 Norwood Road Port Washington, New York 11005	For
#59	J. E. Booker Gulf States Utilities Co Beaumont, Texas 77704	For
#60	John D. Parkyn Route #1 Pleasant Valley Stoddard, WI 54658	For
#61	Jeffrey M. Blum New York University School of Law 40 Washington Square South New York, New York 10011	Against
#62	R. B. Bradbury Stone & Webster Engineering Corporation Boston, Massachusetts 02107	For
#63	Jo Ann Shotwell Office of Attorney General Department of the Attorney General Boston, Massachusetts 02108	Clarify Regulation
#64	Nuclear Information and Resource Service Washington, DC 20036	Against
#65	TMI Public Interest Resource Center Harrisburg, Pa 17103	Against
#66	Mr. Graff Parma Heights, Ohio 44130	Against

## 46 FY 61134

#1	Environmental Law Project School of Law, 064-A University of North Carolina	Against
#2	Citizens Assoc. For Sound Energy Dallas, Texas 75224	Against
#3	Seacost Anti-Pollution League 5 Market Street Portsmouth, New Hampshire 03801	Against
#4	The Honorable Hugh J. Gallen, Governor State of New Hampshire Concord, NH 03301	Extend Comment Period
#5	Coalition for Nuclear Power Postponement 2610 Grendon Drive Wilmington, Delaware 19808	Against
#6	Union of Concerned Scientists 1725 I Street, N. W. Suite 601 Washington, DC 20006	Against
#7	Lowenstein, Newman, Reis & Axelrad Law Offices 1025 Connecticut Avenue, N. W. Washington, DC 20036	For
#8	Leboeuf, Lamb, Leiby & MacRae Law Offices Washington, DC 20036	For
#9	Jeane J. Cruley P. O. Box 189 Summerdale, Pennsylvania 17093	Against
#10	Shaw, Pittman, Potts & Trowbridge Washington, D.C. 20036	For
#11	Susan L. Hiatt 8275 Munson Rd Mentor, Ohio 44060	Against
#12	Middle South Services, Inc Box 61000 New Orleans, LA 70151	For



#13	Nuclear & Hazardous Materials Transportation Project Environmental Policy Institute Fred Millar Director 317 Pennsylvania Avenue S. E. Washington, DC 20003	Against
#14	Jo Ann Shotwell Assistant Attorney General One Asburton Place, Boston 02108	Against
#15	Office of Selectmen Town of Hampton Falls Hampton Falls, New Hampshire 03844	Against
#16	Assistant Attorney General E. Tupper Kinder Concord, New Hampshire 03301-6397	Against
#17	Pollution & Environmental Problems, Inc Palatine, Illinois 60067	Against
#18	Diana P. Sidebotham, President New England Coalition on Nuclear Pollution RD 2 Box 223 Putney, Vermont 05346	Against
#19	Marvin I. Lewis 6504 Bradford Terrace Philadelphia, PA 19149	Against
#20	Edward J. Bonah Office of Selectmen South Hampton, New Hampshire	Against
#21	Members of the House of Representatives State of New Hampshire	Against
#22	Elizabeth Dolly Weinhold 3 Godfrey Avenue Hampton, NH 03842	Against
#23	Pacific Gas & Electric Company San Francisco, CA 94120	For
#24	Nuclear Information & Resource Service Washington, D.C. 20036	Against
#25	Wells Eddleman 325 E. Trinity Ave Durham, NC 27701	Against

#26	William Waters, Chairman Grundy County Board Morris, Illinois	Relates to Frequency of Exercises
#27	Seabrook Station Engineering Office Framingham, MA 01701	For
#28	Seacoast Anti-Pollution League 5 Market Street Portsmouth, New Hampshire 03801	Against
#29	Marvin I. Lewis 6504 Bradford Terrace Philadelphia, Pennsylvania 19149	Against
#30	The Indiana Sassafras Audubon Society Bloomington, Indiana 47401	Against
#31	John R. Thorpe GPU Nuclear Parsippany, New Jersey 07054	For
#32	New York Public Interest Research Group, Inc New York, New York 10038	Against
#33	<del>Sierra Club</del> Nuclear Subcommittee Charlotte, NC 28207	Against
#34	Northeast Utilities Hartford Connecticut 06101	For
#35	Nuclear Plant Intervention Committee League of Women Voters of Rockford, IL Rockford, IL 61107	Against
#36	New England Coalition on Nuclear Pollution, Inc Brattleboro, Vermont 05301	Against
#37	Southern California Edison Company Rosemead, California 91770	For
#38	Commonwealth Edison Chicago, Illinois 60690	For
#39	Gulf States Utilities Co. Beaumont, TX 77704	For
#40	Critical Mass Energy Project Washington, DC 20013	Against

ENCLOSURE THREE

DRAFT CONGRESSIONAL LETTER

Dear Mr. Chairman:

Enclosed for the information of the Subcommittee on \_\_\_\_\_ is a copy of a notice of final rulemaking to be published in the Federal Register. On December 15, 1981, the Commission published in the Federal Register two proposed rule changes (46 FR 61132 and 46 FR 61134). The proposed rule change in FY 46 FR 61134 was considered by the Commission as clarifying in nature. It proposed that 10 CFR 50.47(a)(1) be modified to clarify that the findings on emergency planning required prior to license issuance are predictive in nature and need not reflect state of preparedness at the time the finding is made. The amendment to 10 CFR 50.47(a)(2) was proposed to emphasize the predictive nature of the review and to provide that licensing decisions need not include the results of an exercise. The Commission noted that preparedness connotes the actual state of implementation, is important during the life of the plant and should be treated as an operational inspection matter. The proposed rule change required that a full-scale exercise be conducted before operation above 5% of rated power and periodically thereafter.

The proposed rule change in 46 FR 61132 provided that in order to grant a low power license, only a finding as to the adequacy of onsite emergency planning and preparedness is required. That is, neither FEMA nor NRC would evaluate the adequacy and capability of offsite preparedness organizations and plans prior to issuance of a low power license. While the proposed rule would eliminate the need to have any NRC or FEMA review, findings, or determinations on the adequacy of offsite agencies' emergency planning and preparedness, the NRC review of the licensees' onsite response mechanism would necessarily



include aspects of some offsite elements; communications; notification; assistance agreements with local law enforcement, fire protection, and medical organizations; and the like. Some examples, but not an exclusive list, where review of an applicant's emergency plan would involve aspects of some offsite elements may be found in pertinent portions of 10 CFR 50.47(b)(3), (5), (6), (9), and (12).

Extensive comments were received, all of which were evaluated and considered in developing the final rule. The Commission received 40 letters commenting on the 46 FR 61134 proposed rule change and 66 letters commenting on the 46 FR 61132 proposed rule change. Many letters commented on both issues within the same letter. For 46 FR 61134, 27 letters opposed the rule change while 11 letters favored the rule change. In 46 FR 61132, 43 letters opposed the rule change, while 18 letters favored the rule change. For both rule changes, commenters favoring the rule changes were typically utilities, legal firms and consulting firms representing utilities, and one State health department. Commenters opposing the rule changes included many private citizen and representatives of large segments of the population. A few examples are: Attorney General of Massachusetts, Members of the New Hampshire House of Representatives, Attorney General of New Hampshire, Union of Concerned Scientists, and a number of county governments throughout the country.

The Commission has that a major segment of the public perceives that the rule changes are being made not in the public interest and that their promulgation will adversely affect the public health and safety. The Commission has evaluated all public comments, and has also fully considered the risks of operating a nuclear power reactor at low power. On balance, the Commission has concluded that the rule changes and will enhance efficiency of the licensing program



without adversely affecting the public health and safety and therefore should be published as a final rule.

Sincerely,

Robert B. Minogue, Director  
Office of Nuclear Regulatory Research

Enclosure: Federal Register Notice  
for Final rule