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March 2, 1988

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David Mayer
Chief, Rules and Procedures Branch
U.S. Nuclear Regulatory Commission
Mail Stop: 4000 MMBB
Washington, D.C. 20555

Re: Comments Draft NUREG-0654,
FEMA-RE Rev. 1, Supp. 1;
52 Fed. R. 45,866 (1987)

Dear Mr. Meyer:

On February 29, 1988, the undersigned sent to you comments on behalf of Suffolk County and New York State related to Draft NUREG-0654, Rev. 1, Supp. 1. In those comments, it was stated that Suffolk County and New York State were filing a brief on March 1 with the United States Court of Appeals for the First Circuit in which the Governments would demonstrate that the underlying rule which the Draft NUREG-0654 supplement seeks to implement is illegal. We also stated that that Brief would be submitted to you as an additional comment on the draft supplement.

In conformance with my February 29 letter, I hereby enclose a copy of the "Brief of Petitioners New York State, Governor Mario M. Cuomo, and Suffolk County" dated March 1, 1988, and filed in Docket No. 88-1121 in the United States Court of Appeals for the First Circuit.

Sincerely yours,

Lawrence Coe Lanpher
Lawrence Coe Lanpher

Enclosure

cc: Richard J. Zannleuter, Esq.
Stephen B. Latham, Esq.
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Karla J. Letsche

ADDENDUM TO BRIEF OF PETITIONERS STATE OF
NEW YORK, GOVERNOR MARIO M. CUOMO, AND SUFFOLK COUNTY

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| Nuclear Regulatory Commission, Proposed Rule, <u>Emergency Planning</u> , 44 Fed. Reg. 75,167-74 (December 19, 1979) | Document 1 |
| Excerpts from Transcript of Public Meeting, <u>NRC Staff Presentation on Final Rulemaking on Emergency Preparedness</u> , (June 18, 1980) | Document 2 |
| Nuclear Regulatory Commission Appropriation Authorization, Pub. L. No. 96-295, 94 Stat. 780 (1980) | Document 3 |
| Nuclear Regulatory Commission, Final Rule, <u>Emergency Planning</u> , 45 Fed. Reg. 55,402-13 (August 19, 1980) | Document 4 |
| 10 CFR § 50.47 (prior to 1987 Amendment) | Document 5 |
| 10 CFR Part 50, Appendix E (prior to 1987 Amendment) | Document 6 |
| Nuclear Regulatory Commission, Proposed Rule, <u>Licensing of Nuclear Power Plants Where State and/or Local Governments Decline To Cooperate in Offsite Emergency Planning</u> , 52 Fed. Reg. 6980-87 (March 6, 1987) | Document 7 |
| Nuclear Regulatory Commission, Final Rule, <u>Evaluation of the Adequacy of Off-Site Emergency Planning for Nuclear Power Plants at the Operating License Review Stage Where State and/or Local Governments Decline To Participate in Offsite Emergency Planning</u> , 52 Fed. Reg. 42,078-87 (November 3, 1987) | Document 8 |
| 10 CFR § 50.47 (after 1987 Amendment) | Document 9 |
| 10 CFR Part 50, Appendix E (after 1987 Amendment) | Document 10 |
| Transcript of Telephone Prehearing Conference in <u>Long Island Lighting Co.</u> , (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL-3 (February 25, 1988) | Document 11 |

Long Island Lighting Co., (Shoreham Nuclear
Power Station, Unit 1), Confirmatory Memorandum
and Order (Ruling on LILCO's Motions for Summary
Disposition of Contentions 1, 2, 4, 5, 6, 7, 8
and 10, and Board Guidance on Issues for Litigation)
slip op. (February 29, 1988)

Document 12

Document 1:

Nuclear Regulatory Commission,
Proposed Rule, Emergency Planning,
44 Fed. Reg. 75,167-74 (December 19, 1979)

Proposed Rules

Federal Register

Vol. 44, No. 245

Wednesday, December 19, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Emergency Planning

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed Rule.

SUMMARY: The Nuclear Regulatory Commission, after considering the public record available concerning licensee, State and local government emergency preparedness, and the need to enhance protection of the public health and safety, is proposing to amend its regulations to provide an interim upgrade of NRC emergency planning regulations. In a few areas of the proposed amendments, the Commission has identified two alternatives which it is considering. In each instance both alternatives are presented in the following summary of the proposed changes and in the specific proposed rule changes presented in this notice. The final rule will not necessarily incorporate all of the first alternatives or all of the second alternatives. That is, in some instances the first alternative may be adopted and in others, the second alternative may be adopted. Further alternatives may be adopted as a result of consideration of public comments.

In one alternative (Alternative A), the proposed rule change would not automatically require suspension of operations for lack of concurrence in appropriate State and local government emergency response plans on the date specified in the rule, even if the Commission by that date has not yet determined whether the reactor should be allowed to continue to operate. It would:

1. Require NRC concurrence in the appropriate State and local government emergency response plans prior to operating license issuance, unless the applicant can demonstrate to the satisfaction of the Commission that deficiencies in the plans are not

significant for the nuclear power plant in question, that alternative compensating actions have been or will be taken promptly, or that there are other compelling reasons for license issuance.

2. For nuclear power reactors already licensed to operate, if appropriate State and local emergency response plans have not received NRC concurrence within 180 days after the effective date of this amendment or by January 1, 1981, whichever is sooner, require the Commission to determine whether to require the licensee to shut down the reactor. If at the time the Commission finds that the licensee has demonstrated that the deficiencies in the plans are not significant for the plant in question, that alternative compensating actions have been or will be taken promptly, or that there are other compelling reasons for continued operation, then the licensee may continue operation.

If at that time the Commission cannot make such a finding, then the Commission will order the licensee to show cause why the plant should not be shut down. In cases of serious deficiencies, the order to show cause will be made immediately effective and the licensee would be required to shut down the reactor.

3. For nuclear power reactors already licensed to operate, if appropriate State and local emergency response plans do not warrant continued NRC concurrence and the State or locality do not correct the deficiencies within 4 months of notification by the NRC of withdrawal of its concurrence, require the Commission to determine whether to require the licensee to shut down the reactor. Shut down may not be required if the Commission finds that the licensee has demonstrated that the deficiencies in the plan are not significant for the plant in question, that alternative compensating actions have been or will be taken promptly, or that there are other compelling reasons for continued operation.

If at this time the Commission cannot make such a finding, then the Commission will order the licensee to show cause why the plant should not be shut down. In cases of serious deficiencies, the order to show cause will be made immediately effective and the licensee would be required to shut down the reactor.

In the other alternative (Alternative B), the proposed rule change would

automatically require nuclear power plant shutdown for lack of concurrence in appropriate State and local government emergency response plans on the date specified in the rule unless an exemption is granted by that date. It would:

1. Require NRC concurrence in the appropriate State and local government emergency response plans prior to operating license issuance. However, the Commission can grant an exemption from this requirement if the applicant can demonstrate to the satisfaction of the Commission that deficiencies in the plans are not significant for the plant in question, that alternative compensating actions have been or will be taken promptly, or that there are other compelling reasons for license issuance. No such operating license will be issued unless NRC finds that appropriate protective actions, including evacuation when necessary, can be taken for any reasonably anticipated population within the plume exposure EPZ.

2. For nuclear power reactors already licensed to operate, require a licensee to shut down a reactor immediately if appropriate State or local emergency response plans have not received NRC concurrence within 180 days of the effective date of the final amendments or by January 1, 1981, whichever is sooner. However, the Commission may grant an exemption from this requirement if the licensee can demonstrate to the satisfaction of the Commission that the deficiencies in the plans are not significant for the plant in question, that alternative compensating actions have been or will be taken promptly, or that there are other compelling reasons for continued operation. If there is no concurrence, and the plant is shut down, then it must remain shut down until such an exemption is granted or until concurrence is obtained.

3. For nuclear power reactors already licensed to operate, require a licensee to shut down a reactor if appropriate State or local emergency response plans do not warrant continued NRC concurrence and the State or locality does not correct the deficiencies within 4 months of notification by the NRC of withdrawal of its concurrence. However, the Commission can grant an exemption to this requirement if the licensee can demonstrate to the satisfaction of the Commission that the deficiencies in the

plan are not significant for the plant in question, that alternative compensating actions have been or will be taken promptly, or that there are other compelling reasons for continued operation. If there is no concurrence and the plant is shut down, then it must remain shut down until such an exemption is granted or until concurrence is regained.

In both alternatives the proposed rule would:

4. Require that emergency planning considerations be extended to "Emergency Planning Zones."

5. Require that applicants' and licensees' detailed emergency planning implementing procedures be submitted for NRC review.

6. Clarify and expand 10 CFR Part 50, Appendix E, "Emergency Plans for Production and Utilization Facilities."

DATES: Comments should be submitted on or before February 19, 1980.

ADDRESSES: Interested persons are invited to submit written comments and suggestions on the proposed rule changes and/or the supporting value/impact analysis to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Attention: Docketing and Service Branch. Copies of the value/impact analysis and of comments received by the Commission may be examined in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. and at local Public Document Rooms. Single copies of the value/impact analysis, related regulatory guides, and the NRC staff analysis of the public comments received on the Advance Notice of Proposed Rulemaking may be obtained on request.

FOR FURTHER INFORMATION CONTACT: Mr. Michael T. Jamgochian, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Telephone: 301-443-5966).

SUPPLEMENTARY INFORMATION: In June 1979, the Nuclear Regulatory Commission began a formal reconsideration of the role of emergency planning in assuring the continued protection of the public health and safety in areas around nuclear power facilities. The Commission had begun this reconsideration in recognition of the need for more effective emergency planning and in response to reports issued by responsible offices of government and its Congressional oversight committees.

By memorandum dated July 31, 1979, the Commission requested that the NRC staff undertake expedited rulemaking on the subject of State, local, and licensee emergency response plans. The

proposed rulemaking described in this notice responds to that request, and has been prepared on an expedited basis. Consequently, considerations related to the workability of the proposed rule may have been overlooked and significant impacts to NRC, applicants, licensees, and State and local governments may not have been identified. Therefore, the NRC particularly seeks comments addressed to these points and intends to hold workshops prior to preparing a final rule to (a) present the proposed rule changes to State and local governments, utilities, and other interested parties and (b) obtain comments concerning the costs, impacts, and practicality of the proposed rule.

The Nuclear Regulatory Commission is considering the adoption of amendments to its regulation, "Domestic Licensing of Production and Utilization Facilities," 10 CFR Part 50, that would require that emergency response planning considerations be extended to Emergency Planning Zones (discussed in NUREG-0396, EPA 520/1-78-016, "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants"). Both the Commission and EPA have formally endorsed the concepts in that EPA/NRC Report, 44 FR 61123 (October 28, 1979). In addition, the Nuclear Regulatory Commission is considering revising 10 CFR Part 50, Appendix E, "Emergency Plans for Production and Utilization Facilities," in order to clarify, expand, and upgrade the Commission's emergency planning regulations.¹ Prior to the conclusion of this rulemaking proceeding, the Commission will give special attention to emergency planning matters, including the need for concurred-in plans, on a case-by-case basis in accordance with the modified adjudicatory procedures of 10 CFR Part 2, Appendix B. Under that Appendix, no new license, construction permit, or limited work authorization may be issued without Commission consideration of issues such as this.² Both versions of the proposed amendments call for State and local government emergency response plans

¹ Two NRC staff guidance documents are related to this proposed rule change. "Draft Emergency Action Level Guidelines for Nuclear Power Plants," NUREG-0610 was published for interim use and comment on September 18, 1979. It is expected that a final version of the action level guidelines, based on the public comments received, will be issued in early 1980. In addition, in early 1980 upgraded and revised acceptance criteria for evaluating emergency preparedness plans will be issued for comment and may be included in the Commission's regulations.

² 44 FR 65049 (November 9, 1979).

to be submitted to and concurred in by the NRC as a condition of operating license issuance.

Under one alternative being considered, the proposed rule would require a determination on continued operation of plants where relevant State and local emergency response plans have not received NRC concurrence. Shutdown of a reactor would not follow automatically in every case. Under the other alternative proposal, shutdown of the reactor would be required automatically where the appropriate State and local emergency response plans have not received NRC concurrence within the prescribed time periods. However, the Commission could grant an exemption to this requirement if the licensee can demonstrate to the satisfaction of the Commission that the deficiencies in the plan are not significant for the plant in question, that alternative compensating actions have been or will be taken promptly, or that there are other compelling reasons. If there is no concurrence and the plant is shut down, then the plant must remain shut down until such an exemption is granted or until concurrence is obtained.

The NRC presently requires that power reactor licensees and applicants plan for radiological emergencies within their plant sites and make arrangements with State and local organizations to respond to accidents that might have consequences beyond the site boundary. In this way, offsite emergency response planning has been related to the nuclear licensing process.

To aid State and local governments in the development and implementation of adequate emergency response plans, the NRC, in conjunction with several other Federal agencies, has attempted, on a cooperative and voluntary basis, to provide for training and instruction of State and local government personnel and to establish criteria to guide the preparation of emergency response plans.³ However, in the past, the NRC has not made NRC concurrence in State and local emergency response plans a condition of operation for a nuclear powerplant; the proposed rule would do so, as explained above.

³ NRC staff guidance for the preparation and evaluation of State and local emergency response plans leading to NRC concurrence is contained in NUREG 79/111, "Guide and Checklist for Development and Evaluation of State and Local Government Radiological Emergency Response Plans in Support of Fixed Nuclear Facilities" (December 1, 1974) and Supplement 1 thereto dated March 15, 1977. The adequacy of this guidance is being reevaluated by the staff and the Commission will consider codification of the upgraded criteria in 1980.

In issuing this rule, NRC recognizes the significant responsibilities assigned to the Federal Emergency Management Agency (FEMA) by Executive Order 12148 on July 15, 1979, to coordinate the emergency planning functions of executive agencies. In view of FEMA's new role, NRC agreed on September 11, 1979, that FEMA should henceforth chair the Federal Interagency Central Coordinating Committee for Radiological Emergency Response Planning and Preparedness (FICCC). In addition, NRC and FEMA have agreed to exercise joint responsibility for concurring in State emergency response plans prior to NRC issuance of operating licenses. During the next few months NRC and FEMA will continue to reexamine intra-federal relationships and responsibilities regarding radiological emergency response planning. However, the Commission does not believe that the reexamination should serve as a basis for delay in the proposed rule change.

At several places in the proposed amendments, the Commission refers to the roles of State and local governments. Indeed the main thrust of the proposed rule is that prior concurrence in State and local emergency response plans will be a condition for licensing and operation of a nuclear powerplant. The Commission recognizes that it cannot direct any governmental unit to prepare a plan, much less compel its adequacy. However, the NRC can condition a license on the existence of adequate plans.

While the State and local governments have the primary responsibility under their constitutional police powers to protect their public, the Commission, under authority granted to it by the Congress, also has an important responsibility to protect the public in matters of radiological health and safety. Accordingly, with an understanding of its limitations and with a sensitivity to the importance of all levels of governments working together, the Commission will commit to seek and apply the necessary resources to make its part in this venture work.

Rationale for Change

The proposed rule is predicated on the Commission's considered judgment in the aftermath of the accident at Three Mile Island that safe siting and design-engineered features alone do not optimize protection of the public health and safety. Before the accident it was thought that adequate siting in accordance with existing staff guidance coupled with the defense-in-depth approach to design would be the primary public protection. Emergency

planning was conceived as a secondary but additional measure to be exercised in the unlikely event that an accident would happen. The Commission's perspective was severely altered by the unexpected sequence of events that occurred at Three Mile Island. The accident showed clearly that the protection provided by siting and engineered safety features must be bolstered by the ability to take protective measures during the course of an accident. The accident also showed clearly that on-site conditions and actions, even if they do not cause significant off-site radiological consequences, will affect the way the various State and local entities react to protect the public from dangers, real or imagined, associated with the accident. A conclusion the Commission draws from this is that in carrying out its statutory mandate to protect the public health and safety, the Commission must be in a position to know that off-site governmental plans have been reviewed and found adequate. The Commission finds that the public can be protected within the framework of the Atomic Energy Act only if additional attention is given to emergency response planning. The Commission recognizes that the increment of risk involved in operation of reactors over the prescribed times in the implementation of this rule does not constitute an unacceptable risk to the public health and safety.

The Commission recognizes that this proposal, to view emergency planning as equivalent to, rather than as secondary to, siting and design in public protection, departs from its prior regulatory approach to emergency planning. The Commission has studied the various proposals and believes that this course is the best available choice. In reaching this determination, the Commission is guided by the findings of its Emergency Planning Task Force which found the need for intensive effort by NRC over the next few years to upgrade the regulatory program in this area. The Commission has also endorsed the findings of the EPA-NRC Joint Task Force for policy development in this area. Implementation of these reports by the NRC in its staff guidance is necessary for the NRC to be as effective as possible in assisting those governmental units and those utilities responsible for execution of the plans.

The Commission acknowledges the input of over one hundred commenters to date on the proposal to adopt new regulations. The staff evaluation of these comments is incorporated by reference herein as part of the record in this rulemaking proceeding.

In addition, the Commission acknowledges the important contributions made this year by various official commenters on the state of emergency planning around nuclear facilities, whose views are included as part of the basis for these regulations. The first of these was the report of the General Accounting Office issued coincident with the TMI accident which explicitly recommended that no new nuclear power plants be permitted to operate "unless offsite emergency plans have been concurred in by the NRC," as a way to insure better emergency protection. GAO Report, EMD-78-110, "Areas Around Nuclear Facilities Should Be Better Prepared for Radiological Emergencies" (March 30, 1979). In addition, the NRC Authorization Bill for FY 1980 (S. 562) would amend the Atomic Energy Act to require a concurred-in State plan as a condition of operation. The policy consideration that underlies this provision would be consistent with the Commission's views of the health and safety significance of emergency planning. One of the Commission's House Oversight Subcommittees developed a comprehensive document on the status of emergency planning which recommended that NRC, in a leadership capacity, undertake efforts to upgrade its licensees' emergency plans and State and local plans. House Report No. 96-413, "Emergency Planning Around U.S. Nuclear Power Plants," 96th Cong., 1st Sess. (August 8, 1979). The Report's recommendations were significant and its findings about the need for improved emergency preparedness lend support to the NRC's own efforts to assure that the public is protected. Finally, the President's Commission on the Accident at Three Mile Island has recently recommended approved State and local plans as a condition for resuming licensing. This Commission's Report and its supporting Staff Reports on emergency responses and preparedness are indicative of many of the problems which the NRC would address in this rule. In this regard the Commission notes that the already extensive record made on emergency planning improvements will be supplemented by the report of its own Special Inquiry Group and other ongoing investigations, by any requirements of the NRC Authorization Act, and by the public comments solicited by this proposed rule.

The proposed rule meets many of the concerns discussed in the above mentioned reports and publications. However, the Commission notes that the proposed rule is considered as an

Interim upgrade of NRC emergency planning regulations and, in essence, clarifies and expands areas that have been perceived to be deficient as a result of past experiences. Because the Commission anticipates that further changes in the emergency planning regulations may be proposed as more experience is gained with implementing these revised regulations, as the various Three Mile Island investigations are concluded, and as the results become available from efforts in such areas as instrumentation and monitoring and generic studies of accident models, these proposed rules may require further modifications. Thus the proposed rule changes should be viewed as a first step in improving emergency planning.

Publication of these proposed rule changes in the Federal Register supersedes and thus eliminates the need to continue development of the proposed rule change to 10 CFR Part 50, Appendix E (43 FR 37473), published on August 23, 1978, regarding Emergency Planning considerations outside the Low Population Zone (LPZ).

The Commission is considering whether construction permits which have already been issued should be reconsidered because of the emergency planning considerations of this rule. For plants in operation, NRC teams are now meeting with licensees to upgrade licensee, State and local emergency plans and implementing procedures.

In developing these proposed rule changes, the Commission has considered the potential consequences, social and economic, as well as safety, of the shutdown of an operating nuclear power plant. Under both alternatives, the substantive criteria to be applied in evaluating whether or not a licensee should be allowed to continue to operate the reactor are the same. Thus, both alternatives reflect the view that, while emergency planning is important for public health and safety, the increment of risk involved in permitting operation for a limited time in the absence of concurred-in plans may not be undue in every case.

However, the alternative rule changes differ primarily in the course of action that would follow either non-concurrence, lack of concurrence, or withdrawal of concurrence in relevant State or local emergency plans. Under one alternative (Alternative A) an order to show cause why the licensee should not shut down the plant may be issued in this circumstance, but the order to show cause would not be made immediately effective unless the Commission decided in the particular cases that the safety risks were sufficiently serious to warrant such

immediate action. Under the other alternative (Alternative B), the licensee would be required to shut down the plant immediately in this circumstance. Unless and until an exemption is granted, the licensee will not be allowed to operate the reactor.

The NRC contemplates that under Alternative A initial concurrence and subsequent withdrawal, if necessary, would be noted in local newspapers. Under Alternative B, public notice of any initial concurrence or withdrawal of concurrence would be made both in the Federal Register and in local newspapers. Notice in the Federal Register and in local newspapers will also be provided of any required suspension of operation, any request for an exemption from this requirement, and any request that an operating license be exempt from the requirement for concurred-in plans. Public comments will be welcomed. If significant interest in meeting with the staff is expressed, the staff may hold public meetings in the vicinity of the site to receive and discuss comments and to answer questions.

Accordingly, in the discharge of its duties to assure the adequate protection of the public health and safety, the Commission has decided to issue proposed rules for public comment. The proposed changes to 10 CFR 50.33, 50.47, and 50.54 apply to nuclear power reactors only. However, the proposed Appendix E to 10 CFR Part 50 applies to production and utilization facilities in general except as noted in the proposed Appendix E. These proposals, comments, other official reports, and views expressed at the public workshops will be factored into the final rule, which the NRC now anticipates will be published in early 1980.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Part 50 and Appendix E to 10 CFR Part 50 is contemplated.

Copies of comments received on the proposed amendments may be examined in the Commission's Public Document Room at 1717 H Street, NW., Washington, DC, and at local Public Document Rooms.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. Paragraph (g) of § 50.33 is revised to read as follows:

§ 50.33 Contents of applications; general information.

* * * * *

(g) If the application is for an operating license for a nuclear power reactor, the applicant shall submit radiological emergency response plans of State and local governmental entities in the United States that are wholly or partially within the plume exposure pathway Emergency Planning Zone (EPZ), as well as the plans of State governments wholly or partially within the ingestion pathway EPZ.¹ Generally, the plume exposure pathway EPZ for nuclear power reactors shall consist of an area about 10 miles in radius and the ingestion pathway EPZ shall consist of an area about 50 miles in radius. The exact size and configuration of the EPZs surrounding a particular nuclear power reactor shall be determined in relation to the emergency response needs and capabilities as they are affected by such local conditions as demography, topography, land characteristics, access routes, and local jurisdictional boundaries. The plans for the ingestion pathway shall focus on such less immediate actions as are appropriate to protect the food ingestion pathway.

2. A new § 50.47 is added. Alternative versions of the first paragraph are presented.

§ 50.47 Emergency plans.

[Alternative A: (a) No operating license for a nuclear power reactor will be issued unless the emergency response plans submitted by the applicant in accordance with § 50.33(g) have been reviewed and concurred in by the NRC.² In the absence of one or more concurred-in plans, 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 alternative compensating actions have been or will be taken promptly, or that there are other compelling reasons to permit operation.] OR

[Alternative B: (a) No operating license for a nuclear power reactor will be issued unless the emergency response plans submitted by the applicant in accordance with § 50.33(g) have been reviewed and concurred in by the NRC.² An applicant may request an exemption from this requirement based

¹ Emergency Planning Zones (EPZs) are discussed in NUREG-0396, "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants."

² NRC staff guidance for the preparation and evaluation of State and local emergency response plans leading to NRC concurrence is contained in NUREG 75/111, "Guide and Checklist for Development and Evaluation of State and Local Government Radiological Emergency Response Plans in Support of Fixed Nuclear Facilities" (December 1, 1974) and Supplement 1 thereto dated March 15, 1977.

upon a demonstration by the applicant that any deficiencies in the plans are not significant for the plant in question, that alternative compensating actions have been or will be taken promptly, or that there are other compelling reasons to permit operation. No such operating license will be issued unless NRC finds that appropriate protective actions, including evacuation when necessary, can be taken for any reasonably anticipated population within the plume exposure EPZ.]

(b) Generally, the plume exposure pathway EPZ for nuclear power plants shall consist of an area about 10 miles in radius and the ingestion pathway EPZ shall consist of an area about 50 miles in radius. The exact size and configuration of the EPZs surrounding a particular nuclear power reactor shall be determined in relation to the emergency response needs and capabilities as they are affected by such local conditions as demography, topography, land characteristics, access routes, and local jurisdictional boundaries. The plans for the ingestion pathway shall focus on such less immediate actions as are appropriate to protect the food ingestion pathway.

3. Section 50.54 is amended by adding four new paragraphs, (s), (t), (u) and (v). Alternative passages for paragraphs (s) and (t) are provided:

§ 50.54 Conditions of licenses.

(s) Each licensee who is authorized to possess and/or operate a nuclear power reactor shall submit within 60 days of the effective date of this amendment the radiological emergency response plans of State and local governmental entities in the United States that are wholly or partially within the plume exposure pathway EPZ, as well as the plans of State governments wholly or partially within the ingestion pathway EPZ.¹ Generally, the plume exposure pathway EPZ for nuclear power reactors shall consist of an area about 10 miles in radius and the ingestion pathway EPZ shall consist of an area about 50 miles in radius. The exact size and configuration of the EPZs for a particular nuclear power reactor shall be determined in relation to the emergency response needs and capabilities as they are affected by such local conditions as demography, topography, and land characteristics, access routes, and local jurisdictional boundaries. The plans for the ingestion pathway shall focus on such less immediate actions as are appropriate to protect the food ingestion pathway. [Alternative A: If the appropriate State and local government emergency response plans have not

been concurred in¹ within 180 days of the effective date of the final amendments or by January 1, 1981, whichever is sooner, the Commission will make a determination whether the reactor should be shut down. The reactor need not be shut down if the licensee can demonstrate to the Commission's satisfaction that the deficiencies in the plan are not significant for the plant in question, that alternative compensating actions have been or will be taken promptly, or that there are other compelling reasons for continued operation.] OR [Alternative B: If the plans submitted by the licensee in accordance with the subsection have not been concurred in by NRC within 180 days of the effective date of this amendment or by January 1, 1981, whichever is sooner, the reactor in question will be shut down until the concurrences have been obtained. The licensee may request an exemption from this requirement based upon a demonstration that any deficiencies in the plans are not significant for the plant in question, that alternative compensating actions have been or will be taken promptly, or that there are other compelling reasons for continued operation. However, unless and until this exemption has been granted by the Commission, the plant shall be maintained in the shutdown condition.]

[Alternative A: (t) If, after 180 days following the effective date of these amendments or January 1, 1981, whichever is sooner, and during the operating license period of a nuclear power reactor the Commission determines that the appropriate State and local government emergency response plans do not warrant continued NRC concurrence and such State or local government fails to correct such deficiencies within 4 months of the date of notification of the defects, the Commission will make a determination whether the reactor shall be shut down until the plan is submitted and has again received NRC review and concurrence. The reactor need not be shut down if the licensee can demonstrate to the Commission's satisfaction that the deficiencies in the plan are not significant for the plant in question, that alternative compensating actions have been or will be taken promptly, or that there are other compelling reasons for continued operation.] OR

[Alternative B: (t) If, after 180 days following the effective date of these amendments or after January 1, 1981, whichever is sooner, and during the operating license period of a nuclear power reactor, the Commission determines that the appropriate State or

local government emergency response plans do not warrant continued NRC concurrence and such State or local government fails to correct such deficiencies within 4 months of the date of notification of the defects, the reactor in question will be shut down. The licensee may request an exemption from this requirement based upon a demonstration that any deficiencies in the plans are not significant for the plant in question, that alternative compensating actions have been or will be taken promptly, or that there are other compelling reasons for continued operation. However, unless and until this exemption has been granted by the Commission, the plant shall be maintained in the shutdown condition.]

(u) The licensee of a nuclear power reactor shall provide for the development, revision, implementation and maintenance of its emergency preparedness program. To this end, the licensee shall provide for an independent review of its emergency preparedness program at least every 12 months by licensee, employees, contractors, or other persons who have no direct responsibility for implementation of the emergency preparedness program. The review shall include a review and audit of licensee drills, exercises, capabilities, and procedures. The results of the review and audit, along with recommendations for improvements, shall be documented, reported to the licensee's corporate and plant management, and kept available at the plant for inspection for a period of five years.

(v) Within 180 days after the effective date of the final rules or by January 1, 1981, whichever is sooner, each licensee who is authorized to possess and/or operate a production or utilization facility shall have plans for coping with emergencies which meet the requirements of Appendix E of this Chapter.

4. 10 CFR Part 50, Appendix E, is amended as follows:

Appendix E—Emergency Planning and Preparedness for Production and Utilization Facilities¹

1. Introduction

Each applicant for a construction permit is required by § 50.34(a) to include in its

¹NRC staff has developed three regulatory guides: 1.101, "Emergency Planning for Nuclear Power Plants," 2.6, "Emergency Planning for Research Reactors," and 3.42, "Emergency Planning in Fuel Cycle Facilities and Plants Licensed Under 10 CFR Parts 50 and 70"; and NUREG-0610, "Draft Emergency Level Action Guidelines for Nuclear Power Plants" (September 1979) to help applicants establish adequate plans required pursuant to

Footnotes continued on next page

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 its final safety analysis report plans for coping with emergencies.

This appendix establishes minimum requirements for emergency plans for use in attaining a state of emergency preparedness. These plans shall be described in the preliminary safety analysis report and submitted as a part of the final safety analysis report. The potential radiological hazards to the public associated with the operation of research and test reactors are considerably less than those involved with nuclear power reactor. Consequently, the size of the EPZs for Research and Test reactors and the degree to which compliance with the requirements of this section and sections II, III, IV and V is necessary will be determined on a case-by-case basis using Regulatory Guide 2.6 as a standard for acceptance. State and local government emergency response plans, which may include the plans of offsite support organizations, shall be submitted with the applicant's emergency plans.

II. The Preliminary Safety Analysis Report

The Preliminary Safety Analysis Report shall contain sufficient information to ensure the compatibility of proposed emergency plans both for onsite areas and the EPZs with facility design features, site layout, and site location with respect to such considerations as access routes, surrounding population distributions, and land use for the Emergency Planning Zones¹ (EPZs).

As a minimum, the following items shall be described:

A. Onsite and offsite organizations for coping with emergencies, and the means for notification, in the event of an emergency, of persons assigned to the emergency organizations;

B. Contacts and arrangements made and documented with local, State, and Federal governmental agencies with responsibility for coping with emergencies, including identification of the principal agencies.

[Alternative A: C. Protective measures to be taken in the event of an accident within the site boundary and within each EPZ to protect health and safety; corrective measures to prevent damage to onsite and

offsite property; and the expected response, in the event of an emergency, of offsite agencies] OR

[Alternative B: C. Protective measure to be taken in the event of an accident within the site boundary and within each EPZ to protect health and safety; procedures by which these measures are to be carried out (e.g., in the case of an evacuation, who authorizes the evacuation, how the public is to be notified and instructed, how the evacuation is to be carried out); and the expected response, in the event of an emergency, of offsite agencies];

D. Features of the facility to be provided for onsite emergency first aid and decontamination, and for emergency transportation of onsite individuals to offsite treatment facilities;

E. Provisions to be made for emergency treatment at offsite facilities of individuals injured as a result of licensed activities;

F. Provisions for a training program for employees of the licensee, including those who are assigned specific authority and responsibility in the event of an emergency, and for other persons not employees of the licensee whose assistance may be needed in the event of a radiological emergency;

G. Features of the facility to be provided to ensure the capability for actuating onsite protective measures and the capability for facility reentry in order to mitigate the consequences of an accident or, if appropriate, to continue operation;

H. A preliminary analysis which projects the time and means to be employed in the notification of State and local governments and the public in the event of an emergency. A preliminary analysis of the time required to evacuate various sectors and distances within the plume exposure pathway EPZ for transient and permanent populations.

III. The Final Safety Analysis Report

The Final Safety Analysis Report shall contain the emergency plans for coping with emergencies. The plans shall be an expression of the overall concept of operation, which describe the essential elements of advance planning that have been considered and the provisions that have been made to cope with emergency situations. The plans shall incorporate information about the emergency response roles of supporting organizations and offsite agencies. That information shall be sufficient to provide assurance of coordination among the supporting groups and between them and the licensee.

[Alternative A: The plans submitted must include a description of the elements set out in Section IV to an extent sufficient to demonstrate that the plans provide reasonable assurance that appropriate measures can and will be taken in the event of an emergency to protect public health and safety and minimize damage to property within the Emergency Planning Zones (EPZs).] OR

[Alternative B: The plans submitted must include a description of the elements set out in Section IV to an extent sufficient to demonstrate that the plans provide reasonable assurance that appropriate measures can and will be taken in the event

of an emergency to protect public health and safety within the Emergency Planning Zones (EPZs).]

IV. Content of Emergency Plans

The applicant's emergency plans shall contain, but not necessarily be limited to, the following elements: organization for coping with radiation emergencies, assessment action, activation of emergency organization, notification procedures, emergency facilities and equipment, training, maintaining emergency preparedness, and recovery. The applicant shall also provide an analysis of the time required to evacuate various sectors and distances within the plume exposure pathway EPZ for transient and permanent populations.

A. Organization

The organization for coping with radiological emergencies shall be described including definitions of authorities, responsibilities and duties of individuals assigned to licensee's emergency organization, and the means of notification of such individuals in the event of an emergency. Specifically, the following shall be included:

1. A description of the normal plant operating organization.

2. A description of the onsite emergency response organization with a detailed discussion of:

a. Authorities, responsibilities and duties of the individual(s) who will take charge during an emergency;

b. Plant staff emergency assignments;

c. Authorities, responsibilities, and duties of an onsite emergency coordinator who shall be in charge of the exchange of information with offsite authorities responsible for coordinating and implementing offsite emergency measures.

3. A description of the licensee headquarters personnel that will be sent to the plant site to provide augmentation of the onsite emergency organization.

4. Identification, by position, of persons within the licensee organization who will be responsible for making offsite dose projections and a description of how these projections will be made and the results transmitted to State and local authorities, NRC, FEMA and other appropriate governmental entities.

5. Identification, by position and function, of other employees of the licensee with special qualifications for coping with emergency conditions which may arise. Other persons with special qualifications, such as consultants, who are not employees of the licensee and who may be called upon for assistance for short- or long-term emergencies shall also be identified. The special qualifications of these persons shall be described.

6. A description of the local offsite services to be provided in support of the licensee emergency organization.

7. Identification of and expected assistance from appropriate State, local, and Federal agencies with responsibilities for coping with emergencies.

8. Identification of the State and/or local officials responsible for planning for, ordering, notification of, and controlling

Footnotes continued from last page
 § 50.34 and this Appendix for coping with emergencies. Copies of the guides are available at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555. Copies of guides may be purchased from the Government Printing Office. Information on current prices may be obtained by writing the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager.

¹ The size of the EPZs for a nuclear power plant shall be determined in relation to the emergency response needs and capabilities as they are affected by such local conditions as demography, topography, land characteristics, access routes, and local jurisdictional boundaries. Generally, the plume exposure pathway EPZ for light water nuclear power plants shall consist of an area about 10 miles radius and the ingestion pathway EPZ an area about 30 miles in radius. EPZs are discussed in NUREG-0396. The size of the EPZs for non-power reactors shall be determined on a case-by-case basis.

appropriate protective actions, including evacuations when necessary.

B. Assessment Actions

The means to be provided for determining the magnitude and continued assessment of the release of radioactive materials shall be described including emergency action levels that are to be used as criteria for determining the need for notification and participation of local and State agencies and the Commission and other Federal agencies, and the emergency action levels that are to be used as criteria along with appropriate meteorological information for determining when protective measures should be considered within the outside the site boundary to protect health and safety and prevent damage to property. The emergency action levels shall be based on in-plant conditions and instrumentation in addition to onsite and offsite monitoring. These emergency action levels shall be discussed and agreed upon by the applicant and State and local governmental authorities and approved by NRC. They shall also be reviewed with the State and local governmental authorities on an annual basis.

C. Activation of Emergency Organization

The entire spectrum of emergency conditions which involve the alerting or activation of progressively larger segments of the total emergency organization shall be described. The communication steps taken to alert or activate emergency personnel under each class of emergency shall be described. Emergency action levels (based not only on onsite and offsite radiation monitoring information but also on readings from a number of sensors that indicate a potential emergency such as the pressure in containment and the response of the Emergency Core Cooling System) for notification of offsite agencies shall be described. The existence, but not the details, of a message authentication scheme shall be noted for such agencies.

D. Notification Procedures

1. Administrative and physical means for notifying, and agreements reached with, local, State, and Federal officials and agencies for the early warning of the public and for public evacuation or other protective measures, should they become necessary, shall be described. This description shall include identification of the principal officials, by title and agencies, for the Emergency Planning Zones¹ (EPZs).

2. Provisions shall be described for the yearly dissemination to the public within the plume exposure pathway EPZ of basic emergency planning information such as the possibility of nuclear accidents, the potential human health effects of such accidents and their causes, methods of notification, and the protective actions planned if an accident occurs, as well as a listing of local broadcast network that will be used for dissemination of information during an emergency.

3. Administrative and physical means, and the time required, shall be described for alerting and providing prompt instructions *

to the public within the plume exposure pathway Emergency Planning Zone. It is the applicant's responsibility to ensure that such means exist, regardless of who implements this requirement.

E. Emergency Facilities and Equipment

Provisions shall be made and described for emergency facilities and equipment, including:

1. Equipment at the site for personnel monitoring;
2. Equipment for determining the magnitude of and for continuously assessing the release of radioactive materials to the environment;
3. Facilities and supplies at the site for decontamination of onsite individuals;
4. Facilities and medical supplies at the site for appropriate emergency first aid treatment;
5. Arrangements for the services of a physician and other medical personnel qualified to handle radiation emergencies;
6. Arrangements for transportation of injured or contaminated individuals from the site to treatment facilities outside the site boundary;
7. Arrangements for treatment of individuals injured in support of licensed activities on the site at treatment facilities outside the site boundary;

8. One onsite technical support center and one near-site emergency operation center from which effective direction can be given and effective control can be exercised during an emergency;

9. At least one onsite and one offsite communications system, including redundant power sources. This will include the communication arrangements for emergencies, including titles and alternates for those in charge at both ends of the communication links and the primary and backup means of communication. Where consistent with function of the governmental agency, these arrangements will include:

a. Provision for communications with contiguous State/local governments within the plume exposure pathway Emergency Planning Zone. Such communications shall be tested monthly.

b. Provision for communications with Federal emergency response organizations. Such communications systems shall be tested annually.

c. Provision for communications between the nuclear facility, State and/or local emergency operations centers, and field assessment teams. Such communications systems shall be tested annually.

F. Training

The program to provide for (1) the training of employees and exercising, by periodic drills, of radiation emergency plans to ensure that employees of the licensee are familiar with their specific emergency response duties, and (2) the participation in the training and drills by other persons whose assistance may be needed in the event of a radiation emergency shall be described. This shall include a description of specialized initial training and periodic retraining programs to be provided to each of the following categories of emergency personnel:

a. Directors or coordinators of the plant emergency organization.

b. Personnel responsible for accident assessment, including control room shift personnel.

c. Radiological monitoring teams.

d. Fire control teams (fire brigades).

e. Repair and damage control teams.

f. First aid and rescue teams.

g. Local services personnel, e.g. local Civil Defense, local law enforcement personnel, and local news media persons.

h. Medical support personnel.

i. Licensee's headquarters support personnel.

j. Security personnel.

The plan shall describe provisions for the conduct of yearly drills and exercises to test the adequacy of timing and content of implementing procedures and methods, to test emergency equipment and communication networks, and to ensure that emergency organization personnel are familiar with their duties. Such provisions shall specifically include participation by offsite personnel as described above as well as other State and local governmental agencies. The plan shall also describe provisions for a joint exercise involving the Federal, State, and local response organizations. The scope of such an exercise should test as much of the emergency plans as is reasonably achievable without involving full public participation. Definitive performance criteria shall be established for all levels of participation to ensure an objective evaluation. This joint Federal, State, and local exercise shall be:

1. For presently operating plants, initially within one year of the effective date of this amendment and once every [Alternative A: three years] or [Alternative B: five years] thereafter.

3. For a plant for which an operating license is issued after the effective date of this amendment, initially within one year of the issuance of the operating license and once every [Alternative A: three years] or [Alternative B: five years] thereafter.

All training provisions shall provide for formal critiques in order to evaluate the emergency plan's effectiveness and to correct weak areas through feedback with emphasis on schedules, lesson plans, practical training, and periodic examinations.

G. Maintaining Emergency Preparedness

Provisions to be employed to ensure that the emergency plan, its implementing procedures and emergency equipment and supplies are maintained up to date shall be described.

H. Recovery

Criteria to be used to determine when to the extent possible, following an accident, reentry of the facility is appropriate or when operation should be continued.

V. Implementing Procedures

No less than 180 days prior to scheduled issuance of an operating license, 10 copies each of the applicant's detailed implementing procedures for its emergency plan shall be submitted to NRC Headquarters and to the appropriate NRC Regional Office. Provided that, in cases where the operating license is

¹ It is expected that the capability will be provided to essentially complete alerting of the

public within the plume exposure pathway EPZ within 15 minutes of the notification by the licensee of local and State officials.

scheduled to be issued less than 180 days after the effective date of this rule, such implementing procedures shall be submitted as soon as practicable. Within 90 days after the effective date for compliance under § 50.54(v) with the revised Appendix E, licensees who are authorized to operate a nuclear power facility shall submit 10 copies each of the licensee's emergency plan implementing procedures to NRC Headquarters and to the appropriate NRC Regional Office. As necessary to maintain them up to date thereafter, 10 copies each of any changes to these implementing procedures shall be submitted to NRC Headquarters and to the same NRC Regional Office within 30 days of such changes.

(Sec. 181, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); Sec. 201, as amended, Pub. L. 93-438, 68 Stat. 1242, Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5341).)

Dated at Washington, D.C. this 13th day of December 1979.

For the Nuclear Regulatory Commission,
Samuel J. Chilk,
Secretary of the Commission.

(FR Doc. 79-3805 Filed 12-18-79; 8:45 am)
BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 570

(Docket No. ERA-R-79-54)

Standby Gasoline Rationing Plan

AGENCY: Economic Regulatory Administration, Department of Energy.
ACTION: Notice of Additional Public Hearing.

SUMMARY: On December 7, 1979, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued a notice of proposed rulemaking and public hearings to receive comments on its proposed Standby Gasoline Rationing Plan (44 FR 70799, December 10, 1979). Public hearings are scheduled for Boston, MA, San Francisco, CA, Chicago, IL, New Orleans, LA and Washington, DC.

The purpose of this notice is to schedule a additional public hearing on the proposed Standby Gasoline Rationing Plan in Seattle, WA.

DATES: Hearing: January 3 and 4, 1980, beginning at 9:30 a.m. Requests to speak must be received by December 28, 1979.

ADDRESSES: Hearing location: New Federal Building, 915 2nd Avenue, South Auditorium (4th Floor), Seattle, WA 98174.

Requests to speak should be addressed to: Department of Energy, Attn: Janet Marcan, 1992 Federal Building, 915 2nd Avenue, Seattle, WA 98174.

FOR FURTHER INFORMATION CONTACT: Benton F. Massell (Office of Regulations and Emergency Planning), Economic Regulatory Administration, Room 7112, 2000 M Street, N.W., Washington, D.C. 20461 (202) 254-7303.

Issued in Washington, D.C., December 13, 1979.

F. Scott Bush,

Assistant Administrator, Regulations and Emergency Planning, Economic Regulatory Administration.

(FR Doc. 79-3804 Filed 12-17-79; 10:58 am)

BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 210

(Reg. J; Docket No. R-0266)

Collection of Checks and Other Items and Transfer of Funds

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rules.

SUMMARY: By this action the Board proposes to clarify and simplify its regulations on the collection of checks and other items and for wire transfers of funds. It is not intended that any substantive changes be made in the duties and responsibilities that are set forth in these regulatory provisions.

DATE: Comments must be received on or before February 15, 1980.

ADDRESS: Comments, which should refer to Docket No. R-0266, may be mailed to Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may also be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT: Lee S. Adams, Senior Attorney (202/452-3594), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: As part of its Regulatory Improvement Project, the Board has reviewed the regulatory framework for the collection of checks and other items and for wire transfers of funds that are set forth in Subparts A and B of Regulation J. The Board has determined that, while substantive changes in the regulation were not required, it was desirable to redraft the regulation to clarify and simplify the language. In redrafting Regulation J, the

Board was aware that much of the terminology of the regulation is common and legally recognized through its consistency with the Uniform Commercial Code. Although language improvements were made to achieve brevity and clarity, care was taken not to alter legal concepts through stylistic change.

The Board notes that the revised material was drafted to conform generally with the new part of Regulation J, Subpart C (Automated Clearing House Items) which the Board recently approved for public comment (44 FR 67995). Only minor editorial changes will be required to conform a final version of Subpart C with the revised Subparts A and B.

This notice is published pursuant to section 553(b) of Title 5, United States Code, and § 262.2(a) of the rules of procedure of the Board of Governors. The proposal is made under the authority of sections 11 and 16 of the Federal Reserve Act (12 U.S.C. 248 (j), (o)), which authorize the Board to promulgate rules governing the transfers of funds through Federal Reserve Banks. To aid in the consideration of this material by the Board, interested persons are invited to submit relevant data, views, comments, or arguments.

To implement its proposal, the Board is considering amending Regulation J (12 CFR Part 210) as set forth below:

[Reg. J]

PART 210—COLLECTION OF CHECKS AND OTHER ITEMS AND WIRE TRANSFERS OF FUNDS

Subpart A—Collection of Checks and Other Items

- Sec.
- 210.1 Authority, purpose, and scope.
 - 210.2 Definitions.
 - 210.3 General provisions.
 - 210.4 Sending items to Reserve Banks.
 - 210.5 Sender's agreement; recovery by Reserve Bank.
 - 210.6 Status, warranties, and liability of Reserve Bank.
 - 210.7 Presenting items for payment.
 - 210.8 Presenting noncash items for acceptance.
 - 210.9 Payment.
 - 210.10 Time schedule and availability of credits for cash items.
 - 210.11 Availability of proceeds of noncash items; time schedule.
 - 210.12 Return of cash items.
 - 210.13 Chargeback of unpaid items.
 - 210.14 Extension of time limits.

Subpart B—Wire Transfer of Funds

- 210.25 Authority, purpose, and scope.
- 210.26 Definitions.
- 210.27 General provisions.
- 210.28 Media for transfer items and requests.

Document 2:

Excerpts from Transcript of Public Meeting,
NRC Staff Presentation on Final Rulemaking
on Emergency Preparedness
(June 18, 1980)

ORIGINAL

1
2 UNITED STATES OF AMERICA
3 NUCLEAR REGULATORY COMMISSION

4 STAFF PRESENTATION ON
5 FINAL RULEMAKING ON EMERGENCY PREPAREDNESS
6 PUBLIC MEETING

7 Nuclear Regulatory Commission
8 Room 1130
9 1717 H Street, N. W.
10 Washington, D. C.

11 Wednesday, June 18, 1980

12 The Commission met, pursuant to notice, at
13 2:05 p.m.

14 BEFORE:

15 JOHN F. AHEARNE, Chairman of the Commission
16 JOSEPH H. MENDRIS, Commissioner
17 RICHARD T. KENNEDY, Commissioner
18 VICTOR GILINSKY, Commissioner

19 ALSO PRESENT:

20 L. BUCKWIT
21 N. HANRAHAN
22 H. SHAPIRO
23 K. CORNELL
24 F. COLLIER
25 B. GRINIS
26 H. JANGOCHIAN
R. BERNERO
J. McCONNEL, FEMA
K. PERKINS

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1 more problems for the near-term OL's accomplishing all we
2 need to accomplish for those.

3 MR. COLLIER: They don't necessarily have to do it
4 by that date. The date would relate to when they want to
5 start up and when they want their operating license.

6 MR. CHINES: There are some that would start up
7 before the rule would be effective or before the other
8 plants start up.

9 CHAIRMAN AHEARNE: Why don't you go ahead, Karl.

10 MR. COLLIER: The next issue is the potential state
11 or local government veto power.

12 Can I have the next slide, please.

13 (Next slide.)

14 MR. COLLIER: This is inherent in this rule. As
15 you know, we have discussed this subject before. The veto
16 power reference is a colloquialism used by commenters for
17 the potential failure of a state or local government to
18 develop and/or implement an acceptable emergency plan for
19 any reason and thereby blocking licensing and/or operation
20 of a plant. Not just applicants and licensees but also
21 state and local government representatives commented on
22 this. I want to note also that the ACBS commented on this
23 issue.

24 I would also note that all the comments on this
25 point simply noted potential. There were no suggestions on

1 how to resolve it.

2 CHAIRMAN ANHEARNE: I would also note that the
3 authorization bill, however, does say as a condition of
4 issuing operating licenses that there must be a state or
5 local plan.

6 MR. CHINES: There is an exception for
7 compensating measures.

8 MR. COLLEN: It does, but it also goes on to speak
9 about Commission action.

10 CHAIRMAN ANHEARNE: Right, but at least the
11 requirement for plans.

12 MR. SHAPIR: The bill also requires the NRC by
13 rule to establish a mechanism to encourage and assist, and I
14 think the words were carefully chosen, to encourage and
15 assist states to comply with the standards promulgated by
16 the NRC.

17 CHAIRMAN ANHEARNE: That is what this is.

18 MR. COLLEN: Well, we believe that this is an
19 inherent characteristic of the rule, and for the reasons
20 indicated on the slide that nothing needs to or should be
21 done to offset this.

22 The next slide, please.

23 (Next slide.)

24 COMMISSIONER WENDRIE: Except be aware that
25 sometime down the line one one or another facilities we say

COMMISSION BRIEFING

ON

FINAL RULE

ON

EMERGENCY PREPAREDNESS

JUNE 18, 1980

MAJOR ISSUES PREVIOUSLY DISCUSSED WITH COMMISSION

- 1) NRC "CONCURRENCE" IN STATE & LOCAL PROGRAMS
- 2) NRC/FEMA RESPONSIBILITIES & RELATIONSHIP
- 3) REQUIREMENT FOR CAPABILITY FOR 16 MIN. NOTIFICATION OF PUBLIC
- 4) IMPLEMENTATION SCHEDULE
- 5) STATE AND LOCAL GOVERNMENT "VETO POWER"
- 6) FUNDING FOR STATES & LOCAL GOVTS
- 7) ALTERNATIVE PROVISIONS IN PROPOSED RULE

STATE & LOCAL GOVT "VETO POWER"

ISSUE: FAILURE OF STATE OR LOCAL GOVT TO DEVELOP &/OR IMPLEMENT AN ACCEPTABLE EMERGENCY PLAN FOR ANY REASON COULD EFFECTIVELY BLOCK LICENSING &/OR OPERATION OF A PLANT
ACRS COMMENTED ON THIS ISSUE - REQUESTED CLARIFICATION OF COMMISSION'S INTENTIONS IN THIS REGARD

STAFF RESPONSE:

- . POSSIBILITY SPECIFICALLY RECOGNIZED IN SUPPLEMENTAL INFO ACCOMPANYING RULE
- . OTHER POTENTIAL STATE & LOCAL "VETOS" ALREADY EXIST, I.E. BLDG PERMITS
- . EXPECTATION THAT STATE & LOCAL GOVTS WILL ACT RESPONSIBLY & PROVIDE FOR PUBLIC SAFETY
- . HAS NOT BEEN A PROBLEM IN ANY OF ONGOING REVIEWS OF EMER. PLANNING FOR OPER. REACTORS - HAS GENERALLY REDUCED TO A QUESTION OF FUNDING
- . NEVERTHELESS, COULD BECOME A MAJOR PROBLEM IN SOME FUTURE LICENSING CASES

ACCS MEMBERSHIP / RECOMMENDATIONS

#1 STATE & LOCAL GOVT "VETO POWER" - ACCS REQUESTED CLARIFICATION OF COMMISSION'S INTENTIONS IN THIS REGARD

· POSSIBILITY IS IMPERMENT IN THE BASIC CONCEPT OF THE RULE

· ACTUAL SITUATION IS UNLIKELY

· IF IT DEVELOPS, ADEQUATE PROVISIONS TO ASSURE HEALTH & SAFETY OF PUBLIC MUST TAKE PRECEDENCE

STAFF RECOMMENDATION - COMMISSION'S POSITION IS CLEAR

NO FURTHER ACTION IS NECESSARY

Document 3:

Nuclear Regulatory Commission Appropriation
Authorization, Pub. L. 96-295,
94 Stat. 780 (1980)

PUBLIC LAW 96-295 [S. 562]; June 30, 1980

**AUTHORIZATION, APPROPRIATIONS—NUCLEAR
REGULATORY COMMISSION**

*For Legislative History of this and other Laws, see Table 1, Public
Laws and Legislative History, at end of final volume*

An Act to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled,*

Nuclear
Regulatory
Commission.
Appropriation
authorization.

**TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR
FISCAL YEAR 1980**

Sec. 101. (a) There is hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954 (42 U.S.C. 2017) and section 305 of the Energy Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal year 1980, the sum of \$426,821,000, to remain available until expended. Of such total amount authorized to be appropriated:

(1) not more than \$66,510,000, may be used for "Nuclear Reactor Regulation", of which an amount not to exceed \$1,000,000 is authorized to accelerate the effort in gas-cooled thermal reactor preapplication review;

(2) not more than \$42,440,000, may be used for "Inspection and Enforcement"; of the total amount appropriated for this purpose, \$4,684,000 shall be available for support for 146 additional inspectors for the Resident Inspector program;

(3) not more than \$15,953,000, may be used for "Standards Development";

(4) not more than \$32,380,000, may be used for "Nuclear Material Safety and Safeguards"; of the total amount appropriated for this purpose—

(A) not less than \$60,000 shall be available only for the employment by the Commission of two qualified individuals to be assigned by the Commission for implementation of the United States International Atomic Energy Agency Safeguards Treaty, following ratification of such treaty by the United States Senate;

(B) not less than \$1,500,000 and six additional positions shall be included in the Division of Safeguards for the regulatory improvement of material control and accounting safeguards and the development of improved regulatory requirements for safeguarding the transportation of spent fuel; and

(C) not less than \$9,675,000 shall be available for Nuclear Waste Disposal and Management activities, including support for five additional positions in the Division of Waste Management for implementation of the Uranium Mill Tailings Radiation Control Act of 1978 (Public Law 95-604; 42 U.S.C. 7901 and following);

(5) not more than \$213,005,000, may be used for "Nuclear Regulatory Research", of which—

(A) an amount not to exceed \$3,700,000 shall be available to accelerate the effort in gas-cooled thermal reactor safety research;

(B) an amount not to exceed \$4,400,000 shall be available for implementation of the Improved Safety Systems Research plan required by section 205(f) of the Energy Reorganization Act of 1974, as amended; and

(C) an amount not to exceed \$6,700,000 shall be available for Nuclear Waste Research activities;

(6) not more than \$18,125,000, may be used for "Program Technical Support"; of the total amount appropriated for this purpose, \$4,235,000 shall be available to the Office of State Programs, including support for eight additional positions for training and assistance to State and local governments in radiological emergency response planning and operations and for review of State plans; and

(7) not more than \$38,408,000 may be used for "Program Direction and Administration"; of the total amount appropriated for this purpose, \$400,000 shall be available for support of eight additional positions in the Division of Contracts, Office of Administration.

(b) No amount appropriated to the Nuclear Regulatory Commission pursuant to subsection (a) may be used for any purpose in excess of the amount expressly authorized to be appropriated therefore by paragraphs (1) through (7) of such subsection if such excess amount is greater than \$500,000, nor may the amount available from any appropriation for any purpose specified in such paragraphs be reduced by more than \$500,000, unless—

(1) a period of 45 calendar days (not including any day in which either House of Congress is not in session because of an adjournment of more than 3 calendar days to a day certain or an adjournment sine die) has passed after the receipt by the Committee on Interstate and Foreign Commerce and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works of the Senate of notice given by the Commission containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or

(2) each such Committee has, before the expiration of such period, transmitted to the Commission a written notification that there is no objection to the proposed action.

(c) No amount authorized to be appropriated by this Act may be used by the Nuclear Regulatory Commission to enter into any contract providing funds in excess of \$50,000 encompassing research, study, or technical assistance on domestic safeguards matters except as directed by the Commission, by majority vote, following receipt by the Commission of a recommendation from the Executive Director for Operations supporting the need for such contract.

(d) No amount authorized to be appropriated by this Act may be used by the Nuclear Regulatory Commission to—

(1) place any new work or substantial modification to existing work with another Federal agency, or

(2) contract for research services or modify such contract in an amount greater than \$500,000, unless such placement of work, contract or modification is approved by a Senior Contract Review Board, to be appointed by the Commission within sixty days of the

42 USC 5845

date of enactment of this Act. Such Board shall be accountable to and under the direction of the Commission. If the amount of such placement, contract, or modification is \$1,000,000 or more, approval thereof shall be by majority vote of the Commission. Prior to affording any approval in accordance with the subsection, the reviewing body designated hereunder shall determine that the placement, contract, or modification contains a detailed description of work to be performed, and that alternative methods of obtaining performance including competitive procurement have been considered.

Sec. 102. During the fiscal year 1980, moneys received by the Nuclear Regulatory Commission for the cooperative nuclear research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484). Such moneys shall remain available until expended.

Transfers of
sums.

Sec. 103. During the fiscal year 1980, transfers of sums from salaries and expenses of the Nuclear Regulatory Commission may be made to other agencies of the United States Government for the performance of the work for which the appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred.

Sec. 104. Notwithstanding any other provision of this Act, no authority to make payments hereunder shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

Sec. 105. No amount authorized to be appropriated pursuant to this Act may be used to grant any license, permit or other authorization, or permission to any person for the transportation to, or the interim, long-term, or permanent storage of, spent nuclear fuel or high-level radioactive waste on any territory or insular possession of the United States or the Trust Territory of the Pacific Islands unless—

(1) the President submits to the Congress a report on the transfer at least 30 days before such transfer and on a day during which—

(A) both Houses of the Congress are in session, or

(B) either or both Houses are not in session because of an adjournment of three days or less to a day certain; or

(2) the President determines that an emergency situation exists with respect to such transfer and that it is in the national interest to make such transfer and the President notifies the Speaker of the House of Representatives and the President of the Senate as soon as possible of such transfer.

The provisions of this section shall not apply to the cleanup and rehabilitation of Bikini and Eniwetok Atolls.

Sec. 106. Of the amounts authorized to be appropriated pursuant to this Act, the Nuclear Regulatory Commission is authorized and directed to use such sums as may be necessary to develop a plan for agency response to accidents at a utilization facility licensed under section 103 or section 104(b) of the Atomic Energy Act of 1954. The plan required to be developed by this section shall be forwarded to the Congress on or before September 30, 1980.

42 USC 2133,
2134.

Sec. 107. No funds appropriated pursuant to this Act may be used for the purpose of providing for the licensing or approval of any disposal of nuclear wastes in the oceans.

Regulations.

Sec. 108. (a) Of the amounts authorized to be appropriated pursuant to this Act, the Nuclear Regulatory Commission is authorized and directed to use such sums as may be necessary to develop and

promulgate regulations establishing demographic requirements for the siting of utilization facilities. Such regulations shall be promulgated by the Commission after notice and opportunity for hearing in accordance with section 553 of title 5 of the United States Code. For purposes of this section, the term "utilization facility" means a facility licensed under section 103 or 104(b) of the Atomic Energy Act of 1954.

Notice and hearing
"Utilization facility"

42 USC 2133,
2134.

(b) The regulations promulgated pursuant to this section shall provide that no construction permit may be issued for a utilization facility to which this section applies after the date of such promulgation unless the facility complies with the requirements set forth in such regulations, except that regulations promulgated under this section shall not apply to any facility for which an application for a construction permit was filed on or before October 1, 1979.

(c) The regulations promulgated pursuant to this section shall specify demographic criteria for facility siting, including maximum population density and population distribution for zones surrounding the facility without regard to any design, engineering, or other differences among such facilities.

(d) The regulations promulgated pursuant to this section shall take into account the feasibility of all actions outside the facility which may be necessary to protect public health and safety in the event of any accidental release of radioactive material from the facility which may endanger public health or safety. For purposes of this subsection, the term "accidental release" includes, but is not limited to, each potential accidental release of radioactive material which is required by the Commission to be taken into account for purposes of facility design.

"Accidental release"

(e) The Commission shall provide information and recommendations to State and local land use planning authorities having jurisdiction over the zones established under the regulations promulgated pursuant to this section and over areas beyond the zones which may be affected by a radiological emergency. The information and recommendations provided under this subsection shall be designed to assist such authorities in making State and local land use decisions which may affect emergency planning in relation to utilization facilities.

Information and recommendations

(f) Nothing in this section shall be construed to provide that the Commission shall have any authority to preempt any State requirement relating to land use or respecting the siting of any utilization facility, except that no State or local land use or facility siting requirement relating to the same aspect of facility siting as a requirement established pursuant to this section shall have any force and effect unless such State or local requirement is identical to, or more stringent than, the requirement promulgated pursuant to this section.

Sec. 109. (a) Funds authorized to be appropriated pursuant to this Act may be used by the Nuclear Regulatory Commission to conduct proceedings, and take other actions, with respect to the issuance of an operating license for a utilization facility only if the Commission determines that—

(1) there exists a State or local emergency preparedness plan which—

(A) provides for responding to accidents at the facility concerned, and

(B) as it applies to the facility concerned only, complies with the Commission's guidelines for such plans, or

(2) in the absence of a plan which satisfies the requirements of paragraph (1), there exists a State, local, or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned.

A determination by the Commission under paragraph (1) may be made only in consultation with the Director of the Federal Emergency Management Agency. If, in any proceeding for the issuance of an operating license for a utilization facility to which this subsection applies, the Commission determines that there exists a reasonable assurance that public health and safety is endangered by operation of the facility, the Commission shall identify the risk to public health and safety and provide the applicant with a detailed statement of the reasons for such determination. For purposes of this section, the term "utilization facility" means a facility required to be licensed under section 103 or 104(b) of the Atomic Energy Act of 1954.

(b) Of the amounts authorized to be appropriated under section 101(a), such sums as may be necessary shall be used by the Nuclear Regulatory Commission to—

(1) establish by rule—

(A) standards for State radiological emergency response plans, developed in consultation with the Director of the Federal Emergency Management Agency, and other appropriate agencies, which provide for the response to a radiological emergency involving any utilization facility,

(B) a requirement that—

(i) the Commission will issue operating licenses for utilization facilities only if the Commission determines that—

(I) there exists a State or local radiological emergency response plan which provides for responding to any radiological emergency at the facility concerned and which complies with the Commission's standards for such plans under subparagraph (A),

(II) in the absence of a plan which satisfies the requirements of subclause (I), there exists a State, local, or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned,

(ii) any determination by the Commission under subclause (I) may be made only in consultation with the Director of the Federal Emergency Management Agency and other appropriate agencies, and

(C) a mechanism to encourage and assist States to comply as expeditiously as practicable with the standards promulgated under subparagraph (A) of this paragraph.

(2) review all plans and other preparations respecting such an emergency which have been made by each State in which there is located a utilization facility or in which construction of such a facility has been commenced and by each State which may be affected (as determined by the Commission) by any such emergency,

(3) assess the adequacy of the plans and other preparations reviewed under paragraph (2) and the ability of the States involved to carry out emergency evacuations during an emergency referred to in paragraph (1) and submit a report of such

"Utilization facility"
42 USC 2133, 2134.

Rules.

Review of Plans.

Report to congressional committees.

assessment to the appropriate committees of the Congress within 6 months of the date of the enactment of this Act.

(4) identify which, if any, of the States described in paragraph (2) do not have adequate plans and preparations for such an emergency and notify the Governor and other appropriate authorities in each such State of the respects in which such plans and preparations, if any, do not conform to the guidelines promulgated under paragraph (1), and

(5) submit a report to Congress containing (A) the results of its actions under the preceding paragraphs and (B) its recommendations respecting any additional Federal statutory authority which the Commission deems necessary to provide that adequate plans and preparations for such radiological emergencies are in effect for each State described in paragraph (2).

(c) In carrying out its review and assessment under subsection (b) (2) and (3) and in submitting its report under subsection (a)(5), the Commission shall include a review and assessment, with respect to each utilization facility and each site for which a construction permit has been issued for such a facility, of the emergency response capability of State and local authorities and of the owner or operator (or proposed owner or operator) of such facility. Such review and assessment shall include a determination by the Commission of the maximum zone in the vicinity of each such facility for which evacuation of individuals is feasible at various different times corresponding to the representative warning times for various different types of accidents.

Sec. 110. (a) Of the amounts authorized to be appropriated pursuant to section 101(a), such sums as may be necessary shall be used by the Nuclear Regulatory Commission to develop, submit to the Congress, and implement, as soon as practicable after notice and opportunity for public comment, a comprehensive plan for the systematic safety evaluation of all currently operating utilization facilities required to be licensed under section 103 or section 104(b) of the Atomic Energy Act of 1954.

(b) The plan referred to in subsection (a) shall include—

(1) the identification of each current rule and regulation compliance with which the Commission specifically determines to be of particular significance to the protection of the public health and safety;

(2) a determination by the Commission of the extent to which each operating facility complies with each rule and regulation identified under paragraph (1) of this subsection, including an indication of where such compliance was achieved by use of Division 1 regulatory guides and staff technical positions and where compliance was achieved by equivalent means;

(3) a list of the generic safety issues set forth in NUREG 0410 (including categories A, B, C, and D) for which technical solutions have been developed;

(4) a determination by the Commission of which technical solutions for generic safety issues identified in paragraph (3) of this subsection should be incorporated into the Commission's rules and regulations; and

(5) a schedule for developing a technical solution to those generic safety issues listed in NUREG 0410 which have not yet been technically resolved.

42 USC 2133,
2134.

(c) Not later than 90 days from the date of enactment of this Act, the Commission shall report to the Congress on the status of efforts to carry out subsection (a).

TITLE II—AMENDMENTS TO THE ATOMIC ENERGY ACT OF
1954

- 42 USC 2133. Sec. 201. (a) Section 103 of the Atomic Energy Act of 1954 is amended by adding at the end thereof the following new subsection:
- 42 USC 2134. "f. Each license issued for a utilization facility under this section or section 104 b. shall require as a condition thereof that in case of any accident which could result in an unplanned release of quantities of fission products in excess of allowable limits for normal operation established by the Commission, the licensee shall immediately so notify the Commission. Violation of the condition prescribed by this subsection may, in the Commission's discretion, constitute grounds for license revocation. In accordance with section 187 of this Act, the Commission shall promptly amend each license for a utilization facility issued under this section or section 104 b. which is in effect on the date of enactment of this subsection to include the provisions required under this subsection."
- 42 USC 2237. Sec. 202. (a) Chapter 18 of the Atomic Energy Act of 1954 is amended by adding the following new section at the end thereof:
- 42 USC 2283. "SEC. 235. PROTECTION OF NUCLEAR INSPECTORS.—
"a. Whoever kills any person who performs any inspections which—
"(1) are related to any activity or facility licensed by the Commission, and
"(2) are carried out to satisfy requirements under this Act or under any other Federal law governing the safety of utilization facilities required to be licensed under section 103 or 104 b., or the safety of radioactive materials,
shall be punished as provided under sections 1111 and 1112 of title 18, United States Code. The preceding sentence shall be applicable only if such person is killed while engaged in the performance of such inspection duties or on account of the performance of such duties.
"b. Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person who performs inspections as described under subsection a. of this section, while such person is engaged in such inspection duties or on account of the performance of such duties, shall be punished as provided under section 111 of title 18, United States Code."
(b) The table of contents for chapter 18 of the Atomic Energy Act of 1954 is amended by adding the following new item at the end thereof:
- "Sec. 235. Protection of nuclear inspectors."
- 42 USC 2133, 2134. Sec. 203. Section 223 of the Atomic Energy Act of 1954 is amended by striking out "Whoever" and substituting:
"a. Whoever"
and by adding at the end thereof the following:
"b. Any individual director, officer, or employee of a firm constructing, or supplying the components of any utilization facility required to be licensed under section 103 or 104 b. of this Act who by act or omission, in connection with such construction or supply, knowingly and willfully violates or causes to be violated, any section of this Act, any rule, regulation, or order issued thereunder, or any license condition, which violation results, or if undetected could have resulted, in a significant impairment of a basic component of such a
- 42 USC 2273.

Document 4:

Nuclear Regulatory Commission,
Final Rule, Emergency Planning,
45 Fed. Reg. 55,402-13 (August 19, 1980)

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 70

Emergency Planning

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is upgrading its emergency planning regulations in order to assure that adequate protective measures can and will be taken in the event of a radiological emergency. Nuclear power plants and certain other licensed facilities are required to submit their emergency plans, together with the emergency response plans of State and local governments, to the Commission. The Commission and the Federal Energy Management Agency will review the plans for adequacy. The amendment also extends emergency planning considerations to "Emergency Planning Zones", and makes additional clarifications.

EFFECTIVE DATE: November 3, 1980.

Note.—The Nuclear Regulatory Commission has submitted this rule to the Comptroller General for review of the reporting requirements in the rule, pursuant to the Federal Reports Act, as amended (44 U.S.C. 3512). The date on which the reporting requirements of the rule become effective includes a 60-day period, which the statute allows for Comptroller General review (44 U.S.C. 3512(c)(2)).

FOR FURTHER INFORMATION CONTACT: Mr. Michael T. Jamgochian, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (telephone: 301-443-5900).

SUPPLEMENTARY INFORMATION: On September 19, 1979 and on December 19, 1979, the Commission published for public comment (44 FR 54308 and 44 FR 75167) proposed amendments to its emergency planning regulations for production and utilization facilities. Extensive comments were received, all of which were evaluated and considered in developing the final rule. The comments received and the staff's evaluation is contained in NUREG-0684. In addition, the NRC conducted four Regional Workshops to solicit comments; these comments are available in NUREG/CP-0011 (April 1980).¹

¹ Copies of NUREG documents are available at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. 20555. Copies may be purchased from the Government Printing Office. Information on current prices may be obtained by writing the U.S. Nuclear Regulatory Commission.

The final regulation contains the following elements:

1. In order to continue operations or to receive an operating license an applicant/licensee will be required to submit its emergency plans, as well as State and local governmental emergency response plans, to NRC. The NRC will then make a finding as to whether the state of onsite and offsite 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 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 capable of being implemented and on the NRC assessment as to whether the licensee's/applicant's emergency plans are adequate and capable of being implemented. These issues may be raised in NRC operating license hearings, but a FEMA finding will constitute a rebuttable presumption on the question of adequacy.
2. Emergency planning considerations will be extended to "Emergency Planning Zones."
3. Detailed emergency plan implementing procedures of licensees/applicants will be required to be submitted to NRC for review, and
4. Requirements in 10 CFR Part 50, Appendix E are clarified and upgraded.

Background

In June 1979, the Nuclear Regulatory Commission began a formal reconsideration of the role of emergency planning in ensuring the continued protection of the public health and safety in areas around nuclear power facilities. The Commission began this reconsideration in recognition of the need for more effective emergency planning and in response to the TMI accident and to reports issued by responsible offices of government and the NRC's Congressional oversight committees.

On December 19, 1979, the Nuclear Regulatory Commission published in the Federal Register (44 FR 75167) proposed amendments to 10 CFR Part 50 and Appendix E to Part 50 of its regulations. Publication of these final rule changes in the Federal Register is not only related to the December 19, 1979 proposed rule changes but also incorporates the proposed changes to 10 CFR Parts 50 and 70 (44 FR 54308) published on September 19, 1979. Interested persons were invited to submit written

Washington, D.C. 20555. Attention: Publications Sales Manager.

Comments/suggestions in connection with the proposed amendments within 60 days after publication in the Federal Register. During this comment period (in January 1980) the Commission conducted four regional workshops with State and local officials, utility representatives, and the public to discuss the feasibility of the various portions of the proposed amendments, their impact, and the procedures proposed for complying with their provisions. The NRC used the information from these workshops along with the public comment letters to develop the final rule (more than 200 comment letters and the points made in two petitions for rulemaking were also considered).

In addition to the above, on June 25, 1980, the Commission was briefed by three panels of public commenters on the rule, one each comprised of representatives from the industry, State and local governments, and public interest groups. Each panel raised important concerns regarding the final rule. On July 3, 1980, the Commission was briefed by its staff in response to these panels, including several modifications to the proposed final rules. Finally, on July 23, 1980, at the final Commission consideration of these rules, the Commission was briefed by the General Counsel on the substance of conversations with Congressional staff members who were involved with passage of the NRC Authorization Act for fiscal year 1980, Pub. L. No. 96-208. The General Counsel advised the Commission that the NRC final rules were consistent with that Act. The Commission has relied on all of the above information in its consideration of these final rules. In addition, the Commission directs that the transcripts of these meetings shall be part of the administrative record in this rulemaking. However, the transcripts have not been reviewed for accuracy and, therefore, are only an informal record of the matters discussed.

After evaluating all public comment letters received and all the information obtained during the workshops as well as additional reports such as the Presidential Commission and the NRC Special Inquiry Group Reports, the Commission has decided to publish the final rule changes described below.

Description of Final Rule Changes

The Commission has decided to adopt a version of the proposed rules similar to alternative A described in Sections 50.47 and 50.54 in the Federal Register Notice dated December 19, 1979 (44 FR 75167), as modified in light of comments. These rules are consistent with the

approach outlined by FEMA and NRC in a Memorandum of Understanding (46 FR 5847, January 24, 1981). No new operating license will be granted unless the NRC can make a favorable finding that the integration of onsite and offsite emergency planning provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. In the case of an operating reactor, if it is determined that there are such deficiencies that a favorable NRC finding is not warranted and if the deficiencies are not corrected within 4 months of that determination, the Commission will determine expeditiously whether the reactor should be shut down or whether some other enforcement action is appropriate, pursuant to procedures provided for in 10 CFR 2.200-2.206. In any case where the Commission believes that the public health, safety, or interest so requires, the plant will be required to shut down immediately (10 CFR 2.202(f), see 5 U.S.C. 558(c)).

The standards that the NRC will use in making its determinations under these rules are set forth in the final regulation. Wherever possible, these standards may blend with other emergency planning procedures for nonnuclear emergencies presently in existence. The standards are a restatement of basic NRC and now joint NRC-FEMA guidance to licensees and to State and local governments. See NUREG-0654; FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants for Interim Use and Comment," (January 1980). In deciding whether to permit reactor operation in the face of some deficiencies, the Commission will examine among other factors whether the deficiencies are significant for the reactor in question, whether adequate interim compensatory actions have been or will be taken promptly, or whether other compelling reasons exist for reactor operation. In determining the sufficiency of "adequate interim compensatory actions" under this rule, the Commission will examine State plans, local plans, and licensee plans to determine whether features of one plan can compensate for deficiencies in another plan so that the level of protection for the public health and safety is adequate. This interpretation is consistent with the provisions of the NRC Authorization Act for fiscal year 1980, Pub. L. 96-293.

The regulation contains the following three major changes from past practice:

1. In order to continue operations or to receive an operating license, an

applicant/ licensee will be required to submit its emergency plans, as well as State and local governmental emergency response plans, to NRC. The NRC will then make a finding as to whether the state of onsite and offsite 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 its finding on a review of the FEMA findings and determinations as to whether State and local emergency plans are adequate and capable of being implemented and on the NRC assessment as to whether the applicant's/ licensee's emergency plans are adequate and capable of being implemented. In any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on the question of adequacy. Specifically:

- a. An operating license will not be issued unless a favorable NRC overall finding can be made.
- b. After April 1, 1981, an operating plant may be required to shut down if it is determined that there are deficiencies such that a favorable NRC finding cannot be made or is no longer warranted and the deficiencies are not corrected within 4 months of that determination.

2. Emergency planning considerations must be extended to "Emergency Planning Zones," and

3. Detailed emergency planning implementing procedures of both licensees and applicants for operating licenses must be submitted to NRC for review.

In addition, the Commission is revising 10 CFR Part 50, Appendix E, "Emergency Plans for Production and Utilization Facilities," in order to clarify, expand, and upgrade the Commission's emergency planning regulations. Sections of Appendix E that are expanded include:

1. Specification of "Emergency Action Levels" (Sections IV B and C)
2. Dissemination to the public of basic emergency planning information (Section IV D)
3. Provisions for the State and local governmental authorities to have a capability for rapid notification of the public during a serious reactor emergency, with a design objective of completing the initial notification within 15 minutes after notification by the licensee (Section IV D)
4. A licensee onsite technical support center and a licensee near site emergency operations facility (Section IV E)
5. Provisions for redundant communications systems (Section IV E)

6. Requirement for specialized training (Section IV F)

7. Provisions for up-to-date plan maintenance (Section IV G)

Applicants for a construction permit would be required to submit more information as required in the new Section II of Appendix E.

Rationale for the Final Rules

The Commission's final rules are based on the significance of adequate emergency planning and preparedness to ensure adequate protection of the public health and safety. It is clear, based on the various official reports described in the proposed rules (44 FR 75169) and the public record compiled in this rulemaking, 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. As the Commission reacted to the accident at Three Mile Island, it became clear that the protection provided by siting and engineered design features might be bolstered by the ability to take protective measures during the course of an accident. The 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.

The Commission's organic statutes provide it with a unique degree of discretion in the execution of agency functions. *Siegel v. AEC*, 400 F.2d 778, 783 (D.C. Cir. 1968), see *Westinghouse Electric Corp. v. NRC*, 598 F.2d 759, 771 & n.47 (3d Cir. 1979). "Both the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974 confer broad regulatory functions on the Commission and specifically authorize it to promulgate rules and regulations it deems necessary to fulfill its responsibilities under the Acts, 42 U.S.C. § 2201(p)." *Public Service Co. of New Hampshire v. NRC*, 582 F.2d 77, 82 (1st Cir.), cert. denied, 439 U.S. 1048 (1978). See 42 U.S.C. 2133(a). As the Supreme Court stated almost 20 years ago, the Atomic Energy Act "clearly contemplates that the Commission shall

by regulation set forth what the public safety requirements are as a prerequisite to the issuance of any license or permit under the Act," *Power Reactor Development Co. v. International Union of Electrical Radio Machine Workers*, 387 U.S. 398, 404 (1961). Finally, it is also clear that "Congress, when it enacted [42 U.S.C. 2236] . . . must have envisioned that licensing standards, especially in the areas of health and safety regulation, would vary over time as more was learned about the hazards of generating nuclear energy. Insofar as those standards became more demanding, Congress surely would have wanted the new standards, if the Commission deemed it appropriate, to apply to those nuclear facilities already licensed." *Pf. Pierce Utilities Authority v. United States*, 606 F.2d 988, 996 (D.C. Cir. 1979).

In response to and guided by the various reports and public comments, as well as its own determination on the significance of emergency preparedness, the Commission has therefore concluded that adequate emergency preparedness is an essential aspect in the protection of the public health and safety. The Commission recognizes there is a possibility that the operation of some reactors may be affected by this rule through inaction of State and local governments or an inability to comply with these rules. The Commission believes that the potential restriction of plant operation by State and local officials is not significantly different in kind or effect from the means already available under existing law to prohibit reactor operation, such as zoning and land-use laws, certification of public convenience and necessity, State financial and rate considerations (10 CFR 50.33(f)), and Federal environmental laws. The Commission notes, however, that such considerations generally relate to a one-time decision on siting, whereas this rule requires a periodic renewal of State and local commitments to emergency preparedness. Relative to applying this rule in actual practice, however, the Commission need not shut down a facility until all factors have been thoroughly examined. The Commission believes, based on the record created by the public workshops, that State and local officials as partners in this undertaking will endeavor to provide fully for public protection.

Summary of Comments on Major Issues

The Commission appreciates the extensive public comments on this important rule. In addition to the record of the workshops, the NRC has received over 200 comment letters on the

proposed rule changes. The following major issues have been raised in the comments received.

Issue A: NRC Review and Concurrence in State and Local Radiological Plans

1. FEMA is best suited to assess the adequacy of State and local radiological emergency planning and preparedness and report any adverse findings to NRC for assessment of the licensing consequences of those findings.

2. The proposed rule fails to provide objective standards for NRC concurrence, reconcurrence, and withdrawal of concurrence.

3. In the absence of additional statutory authority, the proposed rule frustrates Congressional intent to preempt State and local government veto power over nuclear power plant operation.

4. Procedures and standards for adjudication of emergency planning disputes are not adequately specified in the proposed rule.

Issue B: Emergency Planning Zones (EPZs)

1. Regulatory basis for imposition of the Emergency Planning Zone concept should be expressly stated in the regulation.

2. Provisions regarding the plume exposure pathway EPZ should provide a maximum planning distance of 10 miles.

3. References to NUREG-0396 should be deleted to avoid disputes over its meaning in licensing proceedings.

Issue C: Alternative A and B (in 50.47 and 50.54)

1. Neither alternative is necessary because the Commission has sufficient authority to order a plant shut down for safety reasons and should be prepared to exercise that authority only on a case-by-case basis and when a particular situation warrants such action.

2. No case has been made by the Commission for the need for automatic shutdown, as would be required in alternative B, and certainly no other NRC regulations exist that would require such action based on a concept as amorphous as "concurrence in State and local emergency plans."

3. The idea that the Commission might grant an exemption to the rules that would permit continued operation (under alternative B) has little significance, primarily because 10 CFR Part 50.12(a) already permits the granting of exemptions.

4. The process and procedures for obtaining such exemptions are not defined, nor is there any policy indication that would indicate the

Commission's disposition to grant such exemptions.

5. The Commission, in developing this aspect of the proposed rule, must consider its own history. There was time when regulation was characterized by the leaders of the agency by simple and very appropriate expressions. The process was to be "effective and efficient." The application of regulatory authority was to be "firm, but fair." Regardless of the outcome of the "concurrence" issue, the Commission must appreciate that alternative B is not fair. It is not effective regulation.

Issue D: Public Education

Only information required to inform the public about what to do in the event of a radiological emergency need be disseminated. There should be flexibility, in any particular case, as to who will be ultimately responsible for disseminating such information.

Issue E: Legal Authority

1. A few commenters felt that NRC had no authority to promulgate a rule as the one proposed.

2. Other comments were the nature that NRC has statutory authority only inside the limits of the plant site.

3. Some commenters suggested that NRC and FEMA should seek additional legislation to compel State and local governments to have emergency plans, if that is what is necessary.

Issue F: Schedule for Implementation

The schedule for implementing the proposed rule was considered to be unrealistic and in some cases in conflict with various State schedules already in existence. A sampling of the comments on the implementation schedule follows:

1. The 180 days in the schedule is an insufficient amount of time to accomplish tasks of this magnitude; the Federal government does not work with such speed. States are bureaucracies also; there is no reason to assume they can work faster. It took years of working with States to get the plans that are presently concurred in. It is just insufficient time for new concurrences and review. Also, to get a job done within that time frame means a hurried job, rather than an acceptable and meaningful plan.

2. The time provided is inadequate for States to acquire the hardware needed. States must go out for competitive bids just as the Federal government does. Between processing and accepting a bid and actual delivery of equipment, it may take a year to get the hardware. The State budgets years ahead; therefore, if a State or local government needs more money, it may have to go to the

legislature. This is a time-consuming public process that may not fit the Federal schedule.

3. NRC and FEMA could not review 70 or more plans and provide concurrence by January 1, 1981. The Federal government moves slowly. Commenters did not think that NRC and FEMA can review all the plans within the time frame scheduled. If the Federal government cannot meet its schedule, why or how should the States?

4. Funding could not be appropriated by State and local governments before the deadline. It was suggested that the Commission use H. Rept. #90-413, "Emergency Planning U.S. Nuclear Power Plants: Nuclear Regulatory Commission Oversight," for the time frame rather than that in the proposed rule or use a sliding-scale time frame since States are at various stages of completing their emergency plans.

Issue G: Impact of Proposed Rule

1. The proposed regulations were considered by some commenters as unfair to utilities because it was felt they place the utilities in the political and financial role that FEMA should be assuming. NRC is seen as in effect giving State and local governments veto over the operation of nuclear plants. It was questioned whether this was an intent of the rule. In addition, it was felt that utilities, their customers, and their shareholders should not be penalized by a shutdown (with a resulting financial burden) because of alleged deficiencies or lack of cooperation by State and local officials.

2. It was suggested that NRC's Office of Inspection and Enforcement conduct the reviews of the State and local governmental emergency response plans in order to ensure prompt, effective, and consistent implementation of the proposed regulations.

3. One commenter noted that the public should be made aware of the issue of intermediate and long-term impacts of plant shutdowns. Specifically, people should be informed of the possibility of "brownouts," cost increases to the consumer due to securing alternative energy sources, and the health and safety factors associated with those alternative sources.

Issue H: Public Notification

1. Ultimate responsibility for public notification of a radiological emergency must be placed on State and local government.

2. The "fifteen minute" public notification rule is without scientific justification, fails to differentiate between areas close in and further away from the site, and ignores the technical

difficulties associated with such a requirement.

Issue I: Emergency Action Levels

Applicants, in cooperation with State and local governmental authorities, should be permitted the necessary flexibility to develop emergency action level criteria appropriate for the facility in question, subject to NRC approval. Inflexible NRC emergency action level standards are not necessary.

Issue J: Training

1. Mandatory provision for training local service personnel and local news media persons is outside of NRC's jurisdiction and is not necessary to protect the public health and safety.

2. Public participation in drills or critiques thereof should not be required.

3. The provision regarding formal critiques should be clarified to mean the licensee is responsible for developing and conducting such critiques.

4. Definitive performance criteria for evaluation of drills should be developed by the licensee, subject to NRC approval.

Issue K: Implementing Procedures

NRC review of implementing procedures is only necessary to apprise the NRC staff of the details of the plans for use by the NRC during the course of an actual emergency.

Issue L: Funding

1. Nuclear facilities, although located in one governmental tax jurisdiction and taxed by that jurisdiction, affect other jurisdictions that must bear immediate and long-term planning costs without having access to taxes from the facility.

2. As the radius of planning requirements becomes greater, few facilities are the concern of a single county. The planning radius often encompasses county lines, State lines, and in some instances, international boundaries.

3. As new regulations are generated to oversee the nuclear industry and old ones expanded, there is an immediate need to address fixed nuclear facility planning at all levels of government, beginning at the lowest and going to the highest. All levels of government need access to immediate additional funds to upgrade their response capability.

4. It is well understood that the consumer ultimately must pay the price for planning, regardless of the level in government at which costs are incurred. It becomes a matter of how the consumer will be taxed, who will administer the tax receipts, and what is the most effective manner in which to address the problem.

5. The basis for effective offsite response capabilities is a sound emergency preparedness program. Federal support (funding and technical assistance) for the development of State and local offsite capabilities should be incorporated into FEMA's preparedness program for all emergencies.

Issue M: General

The States support Federal oversight and guidance in the development of offsite response capabilities. However, many States feel the confusion and uncertainty in planning requirements following Three Mile Island is not a proper environment in which to develop effective capabilities nor does it serve the best interests of their citizens. The development of effective nuclear facility incident response capabilities will require close coordination and cooperation among responsible Federal agencies, State government, and the nuclear industry. An orderly and comprehensive approach to this effort makes it necessary that onsite responsibilities be clearly associated with NRC and the nuclear industry while deferring offsite responsibilities to State government with appropriate FEMA oversight and assistance.

In addition to these comments, two petitions for rulemaking were filed in reference to the proposed rule. These were treated as public comments rather than petitions and were considered in developing the final rule.

The Commission has placed the planning objectives from NUREG-0654; FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants for Interim Use and Comment," January 1980, into the final regulations. Comments received concerning NUREG-0654 were available in developing the final regulation. The Commission notes that the planning objectives in NUREG-0654 were largely drawn from NUREG-75/111, "Guide and Checklist for Development and Evaluation of State and Local Government Radiological Emergency Response Plans in Support of Fixed Nuclear Facilities," (December 1, 1974) and Supplement 1 thereto dated March 15, 1977, which have been in use for some time.

The approximately 60 public comment letters received on NUREG-0654 were not critical of the proposed planning objectives. The Commission also notes that at the May 1, 1980 ACRS meeting, the Atomic Industrial Forum representative encouraged the use of the planning objectives from NUREG-0654 in the final regulations in order to

reduce ambiguity and provide specificity to the final regulation.

Based on the above, the Commission has decided to modify the proposed rule changes in the areas discussed in paragraphs I through X below.

I. FEMA/NRC Relationship

In issuing this rule, NRC recognizes the significant responsibilities assigned to FEMA, by Executive Order 12148 on July 15, 1979, to coordinate the emergency planning functions of executive agencies. In view of FEMA's new role, NRC agreed on September 11, 1979, that FEMA should henceforth chair the Federal Interagency Central Coordinating Committee for Radiological Emergency Response Planning and Preparedness (FICCC). On December 7, 1979, the President issued a directive assigning FEMA lead responsibility for offsite emergency preparedness around nuclear facilities. The NRC and FEMA immediately initiated negotiations for a Memorandum of Understanding (MOU) that lays out the agencies' roles and provides for a smooth transfer of responsibilities. It is recognized that the MOU, which became effective January 14, 1980, supersedes some aspects of previous agreements. Specifically, the MOU identifies FEMA responsibilities with respect to emergency preparedness as they relate to NRC as the following:

1. To make findings and determinations as to whether State and local emergency plans are adequate.
2. To verify that State and local emergency plans are capable of being implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualification, and equipment).
3. To assume responsibility for emergency preparedness training of State and local officials.
4. To develop and issue an updated series of interagency assignments that delineate respective agency capabilities and responsibilities and define procedures for coordination and direction for emergency planning and response.

Specifically, the NRC responsibilities for emergency preparedness identified in the MOU are:

1. To assess licensee emergency plans for adequacy.
2. To verify that licensee emergency plans are adequately implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment).
3. To review the FEMA findings and determinations on the adequacy and

capability of implementation of State and local plans.

4. To make decisions with regard to the overall state of emergency preparedness (i.e., integration of the licensee's emergency preparedness as determined by the NRC and of the State/local governments as determined by FEMA and reviewed by NRC) and issuance of operating licenses or shutdown of operating reactors.

In addition, FEMA has prepared a proposed rule regarding "Review and Approval of State Radiological Emergency Plans and Preparedness" (44 FR 42342, dated June 24, 1980). According to the proposed FEMA rule, FEMA will approve State and local emergency plans and preparedness, where appropriate, based upon its findings and determinations with respect to the adequacy of State and local plans and the capabilities of State and local governments to effectively implement these plans and preparedness measures. These findings and determinations will be provided to the NRC for use in its licensing process.

II. Emergency Planning Zone Concept

The Commission notes that the regulatory basis for adoption of the Emergency Planning Zone (EPZ) concept is the Commission's decision to have a conservative emergency planning policy in addition to the conservatism inherent in the defense-in-depth philosophy. This policy was endorsed by the Commission in a policy statement published on October 23, 1979 (44 FR 61123). At that time the Commission stated that two Emergency Planning Zones (EPZs) should be established around each light-water nuclear power plant. The EPZ for airborne exposure has a radius of about 10 miles; the EPZ for contaminated food and water has a radius of about 50 miles. Predetermined protective action plans are needed for the EPZs. The exact size and shape of each EPZ will be decided by emergency planning officials after they consider the specific conditions at each site. These distances are considered large enough to provide a response base that would support activity outside the planning zone should this ever be needed.

III. Position on Planning Basis for Small Light-Water Reactors and Ft. St. Vrain

The Commission has concluded that the operators of small light-water-cooled power reactors (less than 250 MWt) and the Ft. St. Vrain gas-cooled reactor may establish smaller planning zones which will be evaluated on a case-by-case basis. This conclusion is based on the lower potential hazard from these facilities (lower radionuclide inventory

and longer times to release significant amounts of activity in many scenarios). Guidance regarding the radionuclides to be considered in planning is set forth in NUREG-0399; EPA 520/1-78-016, "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light-Water Nuclear Power Plants," December 1978.

IV. Rationale for Alternatives Chosen

In a few areas of the proposed rule, the Commission identified two alternatives that it was considering. Many public comments were received on these alternatives; based on due consideration of all comments received as well as the discussions presented during the workshops, the Commission has determined which of each pair of alternatives to retain in the final rule.

In Sections 50.47 and 50.54 (s) and (t), the alternatives dealt with conditioning the issuance of an operating license or continued operation of a nuclear power plant on the existence of State and local government emergency response plans concurred in by NRC.* The basic difference between alternatives A and B in these sections was that, under alternative A, the proposed rule would require a determination by NRC on issuing a license or permitting continued operation of plants in those cases where relevant State and local emergency response plans had not received NRC concurrence. Denial of a license or shutdown of a reactor would not follow automatically in every case. Under alternative B, shutdown of the reactor would be required automatically if the appropriate State and local emergency response plans had not received NRC concurrence within the prescribed time periods unless an exemption is granted.

After consideration of the public record and on the recommendation of its staff, the Commission has chosen a text for Sections 50.47 and 50.54 (s) and (t) that is similar to, but less restrictive than, alternative A in the proposed rule. Rather than providing for the shutdown of the reactor as the only enforcement action and prescribing specific preconditions for the shutdown remedy, the final rule makes clear that for emergency planning rules, like all other rules, reactor shutdown as outlined in the rule is but one of a number of possible enforcement actions and many factors should be considered in determining whether it is an appropriate action in a given case. This Commission choice is consistent with most of the comments received from State and local

* See Section V for a discussion concerning "concurrency."

governments and is consistent with the provisions of Section 109 of the NRC fiscal year 1980 Authorization Act. Alternative B was seen by some of the commenters as potentially causing unnecessarily harsh economic and social consequences to State and local governments, utilities, and the public.

State and local governments that are directly involved in implementing planning objectives of the rule strongly favor alternative A since it provides for a cooperative effort with State and local governments to reflect their concerns and desires in these rules. This choice is responsive to that effort. In addition, the industry strongly supported alternative A as being the more workable of the two alternatives.

In Appendix E, Sections II.C and III, alternative A would require an applicant/licensee to outline "... corrective measures to prevent damage to onsite and offsite property," as well as protective measures for the public. Alternative B addresses only protective measures for the public health and safety. The Commission has chosen alternative B because public health and safety should take clear precedence over actions to protect property. Measures to protect property can be taken on an ad hoc basis as resources become available after an accident.

In Appendix E, under Training, alternative A would provide for a joint licensee, Federal, State, and local government exercise every 3 years, whereas alternative B would provide for these exercises to be performed every 5 years at each site. The Commission has chosen alternative B because the Commission is satisfied that the provision that these exercises be performed every 5 years for each site will allow for an adequate level of preparedness among Federal emergency response agencies. In addition, under these regulations, each licensee is required to exercise annually with local governmental authorities. Furthermore, Federal emergency response agencies may have difficulty supporting exercises every 3 years for all of the nuclear facilities that would be required to comply with these rule changes.

V. Definition of Plan Approval Process

The term "concurrency" has been deleted from the proposed regulations and replaced with reference to the actual procedure and standards that NRC and FEMA have agreed upon and are implementing. According to the agreed upon procedure, FEMA will make a finding and determination as to the adequacy of State and local government emergency response plans. The NRC will determine the adequacy of

the licensee emergency response plans. After these two determinations have been made, NRC will make a finding in the licensing process as to the overall and integrated state of preparedness.

It was pointed out to the Commission at the workshops and in public comment letters that the term "concurrency" was confusing and ambiguous. Also, there was a great deal of misunderstanding with the use of the term because, in the past, the obtaining of NRC "concurrency" in State emergency response plans was voluntary on behalf of the States and not a regulatory requirement in the licensing process. Previously too, "concurrency" was statewide rather than site-specific.

VI. Fifteen-Minute Notification

The requirement for the capability for notification of the public within 15 minutes after the State/local authorities have been notified by the licensee has been expanded and clarified. It also has been removed as a footnote and placed in the body of Appendix E. The implementation schedule for this requirement has been extended to July 1, 1981. This extension of time has been adopted because most State and local governments identified to the Commission the difficulty in procuring hardware, contracting for installation, and developing procedures for operating the systems used to implement this requirement.

The Commission is aware that various commenters, largely from the industry, have objected to the nature of the 15-minute notification requirement, indicating that it may be both arbitrary and unworkable.

Among the possible alternatives to this requirement are a longer notification time, a notification time that varies with distance from the facility, or no specified time. In determining what that criterion should be, a line must be drawn somewhere, and the Commission believes that providing as much time as practicable for the taking of protective action is in the interest of public health and safety. The Commission recognizes that this requirement may present a significant financial impact and that the technical basis for this requirement is not without dispute. Moreover, there may never be an accident requiring using the 15-minute notification capability. However, the essential rationale behind emergency planning is to provide additional assurance for the public protection even during such an unexpected event. The 15-minute notification capability requirement is wholly consistent with that rationale.

The Commission recognizes that no single accident scenario should form the

basis for choice of notification capability requirements for offsite authorities and for the public. Emergency plans must be developed that will have the flexibility to ensure response to a wide spectrum of accidents. This wide spectrum of potential accidents also reflects on the appropriate use of the offsite notification capability. The use of this notification capability will range from immediate notification of the public (within 15 minutes) to listen to predesignated radio and television stations, to the more likely events where there is substantial time available for the State and local governmental officials to make a judgment whether or not to activate the public notification system.

Any accident involving severe fuel degradation or core melt that results in significant inventories of fission products in the containment would warrant immediate public notification and consideration, based on the particular circumstances, of appropriate protective action because of the potential for leakage of the containment building. In addition, the warning time available for the public to take action may be substantially less than the total time between the original initiating event and the time at which significant radioactive releases take place. Specification of particular times as design objectives for notification of offsite authorities and the public are a means of ensuring that a system will be in place with the capability to notify the public to seek further information by listening to predesignated radio or television stations. The Commission recognizes that not every individual would necessarily be reached by the actual operation of such a system under all conditions of system use. However, the Commission believes that provision of a general alerting system will significantly improve the capability for taking protective actions in the event of an emergency. The reduction of notification times from the several hours required for street-by-street notification to minutes will significantly increase the options available as protective actions under severe accident conditions. These actions could include staying indoors in the case of a release that has already occurred or a precautionary evacuation in the case of a potential release thought to be a few hours away. Accidents that do not result in core melt may also cause relatively quick releases for which protective actions, at least for the public in the immediate plant vicinity, are desirable.

Some comments received on the proposed rule advocated the use of a staged notification system with quick notification required only near the plant. The Commission believes that the capability for quick notification within the entire plume exposure emergency planning zone should be provided but recognizes that some planners may wish to have the option of selectively contacting part of the system during an actual response. Planners should carefully consider the impact of the added decisions that offsite authorities would need to make and the desirability of establishing an official communication link to all residents in the plume exposure emergency planning zone when determining whether to plan for a staged notification capability.

VII. Effective Date of Rules and Other Guidance

Prior to the publication of these amendments, two guidance documents were published for public comment and interim use. These are NUREG-0610, "Draft Emergency Action Level Guidelines for Nuclear Power Plants," (September 1979) and NUREG-0634/FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants for Interim Use and Comment," (January 1980). It is expected that versions of these documents, revised on the basis of public comments received, will be issued to assist in defining acceptable levels of preparedness to meet this final regulation. In the interim, these documents should continue to be used as guidance.

VIII. Hearing Procedures Used in Implementation of These Regulations

Should the NRC believe that the overall state of emergency preparedness at and around a licensed facility is such that there is some question whether a facility should be permitted to continue to operate, the Commission may issue an order to the licensee to show cause, pursuant to 10 CFR 2.202, why the plant should not be shut down. This issue may arise, for example, if NRC finds a significant deficiency in a licensee plan or in the overall state of emergency preparedness.

If the NRC decides to issue an order to show cause, it will provide the licensee the opportunity to demonstrate to the Commission's satisfaction, for example, that the alleged deficiencies are not significant for the reactor in question, whether adequate interim compensating actions have been or will be taken promptly, or whether other compelling

reasons exist for reactor operation. Finally, pursuant to 10 CFR 2.202(f), the Commission may, in appropriate circumstances, make the order immediately effective, which could result in immediate plant shutdown subject to a later hearing.

IX. Funding

In view of the requirements in these rule changes regarding the actions to be taken in the event State and local government planning and preparedness are or become inadequate, a utility may have an incentive, based on its own self interest as well as its responsibility to provide power, to assist in providing manpower, items of equipment, or other resources that the State and local governments may need but are themselves unable to provide. The Commission believes that in view of the President's Statement of December 7, 1979, giving FEMA the lead role in offsite planning and preparedness, the question of whether the NRC should or could require a utility to contribute to the expenses incurred by State and local governments in upgrading and maintaining their emergency planning and preparedness (and if it is to be required, the mechanics for doing so) is beyond the scope of the present rule change. It should be noted, however, that any direct funding of State or local governments solely for emergency preparedness purposes by the Federal government would come through FEMA.

X. Exercises

On an annual basis, all commercial nuclear power facilities will be required by NRC to exercise their plans; these exercises should involve exercising the appropriate local government plans in support of these facilities. The State may choose to limit its participation in exercises at facilities other than the facility (site) chosen for the annual exercise(s) of the State plan.

Each State and appropriate local government shall annually conduct an exercise jointly with a commercial nuclear power facility. However, States with more than one facility (site) shall schedule exercises such that each individual facility (site) is exercised in conjunction with the State and appropriate local government plans not less than once every 3 years for sites with the plume exposure pathway EPZ partially or wholly within the State, and not less than once every 5 years for sites with the ingestion exposure pathway EPZ partially or wholly within the State. The State shall choose, on a rotational basis, the site(s) at which the required annual exercise(s) is to be conducted; priority shall be given to new facilities

seeking an operating license from NRC that have not had an exercise involving the State plan at that facility site.

The Commission has determined under the criteria in 10 CFR Part 51 that an environmental impact statement for the amendments to 10 CFR Part 50 and Appendix B thereof is not required. This determination is based on "Environmental Assessment for Final Changes to 10 CFR Part 50 and Appendix E of 10 CFR Part 50, Emergency Planning Requirements for Nuclear Power Plants" (NUREG-0665, June 1980). Comments on the "Draft Negative Declaration: Finding of No Significant Impact" (45 FR 3613, January 21, 1980) were considered in the preparation of NUREG-0683.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Sections 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, Parts 50 and 70, are published as a document subject to certification.

Part 50—Domestic Licensing of Production and Utilization Facilities

1. Paragraph (g) of Section 50.33 is revised to read as follows:

§ 50.33 Contents of applications; general information.

(g) If the application is for an operating license for a nuclear power reactor, the applicant shall submit radiological emergency response plans of State and local governmental entities in the United States that are wholly or partially within the plume exposure pathway Emergency Planning Zone (EPZ)¹, as well as the plans of State governments wholly or partially within the ingestion pathway EPZ.² Generally, the plume exposure pathway EPZ for nuclear power reactors shall consist of an area about 10 miles (16 km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 km) in radius. The exact size and configuration of the EPZs surrounding a particular nuclear power reactor shall be determined in relation to the local emergency response needs and

¹ Emergency Planning Zones (EPZs) are discussed in NUREG-0298, EPA 320/1-78-018, "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans to Support of Light-Water Nuclear Power Plants," December 1978.

² If the State and local emergency response plans have been previously provided to the NRC for inclusion in the facility docket, the applicant need only provide the appropriate reference to meet this requirement.

capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. The size of the EPZs also may be determined on a case-by-case basis for gas-cooled reactors and for reactors with an authorized power level less than 250 MW thermal. The plans for the ingestion pathway shall focus on such actions as are appropriate to protect the food ingestion pathway.

2. A new § 50.47 is added.

§ 50.47 Emergency plans.

(a)(1) 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 emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

(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 capable of being implemented, and on the NRC's assessment as to whether the applicant's onsite emergency plans are adequate and capable of being implemented. In any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on a question of adequacy.

(b) The onsite and offsite emergency response plans for nuclear power reactors must meet the following standards:¹

(1) Primary responsibilities for emergency response by the nuclear facility licensee and by State and local organizations within the Emergency Planning Zones have been assigned, the emergency responsibilities of the various supporting organizations have been specifically established, and each principal response organization has staff to respond and to augment its initial response on a continuous basis.

(2) On-shift facility licensee responsibilities for emergency response are unambiguously defined, adequate staffing to provide initial facility accident response in key functional areas is maintained at all times, timely augmentation of response capabilities is available and the interfaces among various onsite response activities and offsite support and response activities are specified.

¹ These standards are addressed by specific criteria in NUREG-0664, FEMA-REP-1 entitled "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants—For Interim Use and Comment" January 1980.

(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.

(4) A standard emergency classification and action level scheme, the bases of which include facility system and effluent parameters, is in use by the nuclear facility licensee, and State and local response plans call for reliance on information provided by facility licensees for determinations of minimum initial offsite response measures.

(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 instructions to the populace within the plume exposure pathway Emergency Planning Zones have been established.

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

(7) Information is made available to the public on a periodic basis on how they will be notified and what their initial actions should be in an emergency (e.g., listening to a local broadcast station and remaining indoors), the principal points of contact with the news media for dissemination of information during an emergency (including the physical location or locations) are established in advance, and procedures for coordinated dissemination of information to the public are established.

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

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

(10) A range of protective actions have been developed for the plume exposure pathway EPZ for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

(11) Means for controlling radiological exposures, in an emergency, are

established for emergency workers. The means for controlling radiological exposures shall include exposure guidelines consistent with EPA Emergency Worker and Lifesaving Activity Protective Action Guides.

(12) Arrangements are made for medical services for contaminated injured individuals.

(13) General plans for recovery and reentry are developed.

(14) Periodic exercises are (will be) conducted to evaluate major portions of emergency response capabilities, periodic drills are (will be) conducted to develop and maintain key skills, and deficiencies identified as a result of exercises or drills are (will be) corrected.

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

(16) Responsibilities for plan development and review and for distribution of emergency plans are established, and planners are properly trained.

(c)(1) Failure to meet the standards set forth in paragraph (b) of this subsection 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.

(2) Generally, the plume exposure pathway EPZ for nuclear power plants shall consist of an area about 10 miles (16 km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 km) in radius. The exact size and configuration of the EPZs surrounding a particular nuclear power reactor shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. The size of the EPZs also may be determined on a case-by-case basis for gas-cooled nuclear reactors and for reactors with an authorized power level less than 250 MW thermal. The plans for the ingestion pathway shall focus on such actions as are appropriate to protect the food ingestion pathway.

3. Section 50.54 is amended by adding five new paragraphs (q), (r), (s), (t), and (u).

§ 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 standards in § 50.47(b) and the requirements in Appendix E of 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 of 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 standards of § 50.47(b) and the requirements of Appendix E of 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 of 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 Director 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.

(r) Each licensee who is authorized to possess and/or operate a research or test reactor facility with an authorized power level greater than or equal to 500 kW thermal, under a license of the type specified in § 50.21(c), shall submit emergency plans complying with 10 CFR Part 50, Appendix E, to the Director of Nuclear Reactor Regulation for approval within one year from the effective date of this rule. Each licensee who is authorized to possess and/or operate a research reactor facility with an authorized power level less than 500 kW thermal, under a license of the type specified in § 50.21(c), shall submit emergency plans complying with 10 CFR Part 50, Appendix E, to the Director of Nuclear Reactor Regulation for approval within two years from the effective date of this amendment.

(s)(1) Each licensee who is authorized to possess and/or operate a nuclear power reactor shall submit to NRC

within 60 days of the effective date of this amendment the radiological emergency response plans of State and local governmental entities in the United States that are wholly or partially within a plume exposure pathway EPZ, as well as the plans of State governments wholly or partially within an ingestion pathway EPZ.¹ Ten (10) copies of the above plans shall be forwarded to the Director of Nuclear Reactor Regulation with 3 copies to the Director of the appropriate NRC regional office. Generally, the plume exposure pathway EPZ for nuclear power reactors shall consist of an area about 10 miles (16 km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 km) in radius. The exact size and configuration of the EPZs for a particular nuclear power reactor shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. The size of the EPZs also may be determined on a case-by-case basis for gas-cooled nuclear reactors and for reactors with an authorized power level less than 250 MW thermal. The plans for the ingestion pathway EPZ shall focus on such actions as are appropriate to protect the food ingestion pathway.

(2) For operating power reactors, the licensee, State, and local emergency response plans shall be implemented by April 1, 1981, except as provided in Section IV.D.3 of Appendix E of this Part. If after April 1, 1981, the NRC finds that the state of emergency preparedness does not provide reasonable assurance that appropriate protective measures can and will be taken in the event of a radiological emergency and if the deficiencies are not corrected within four months of that finding, the Commission will determine whether the reactor shall be shut down until such deficiencies are remedied or whether other enforcement action is appropriate. In determining whether a shutdown or other enforcement action is appropriate, the Commission shall take into account, among other factors, whether the licensee can demonstrate to the Commission's satisfaction that the deficiencies in the plan are not

¹ Emergency Planning Zones (EPZs) are discussed in NUREG-0396, EPA 520/1-78-018, "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants," December 1976.

² If the State and local emergency response plans have been previously provided to the NRC for inclusion in the facility docket, the applicant need only provide the appropriate reference to meet this requirement.

significant for the plant in question, or that adequate interim compensating actions have been or will be taken promptly, or that there are other compelling reasons for continued operation.

(3) The NRC will base its finding on a review of the FEMA findings and determinations as to whether State and local emergency plans are adequate and capable of being implemented, and on the NRC assessment as to whether the licensee's emergency plans are adequate and capable of being implemented. Nothing in this paragraph shall be construed as limiting the authority of the Commission to take action under any other regulation or authority of the Commission or at any time other than that specified in this paragraph.

(t) A nuclear power reactor licensee shall provide for the development, revision, implementation, and maintenance of its emergency preparedness program. To this end, the licensee shall provide for a review of its emergency preparedness program at least every 12 months by persons who have no direct responsibility for implementation of the emergency preparedness program. The review shall include an evaluation for adequacy of interfaces with State and local governments and of licensee drills, exercises, capabilities, and procedures. The results of the review, along with recommendations for improvements, shall be documented, reported to the licensee's corporate and plant management, and retained for a period of five years. The part of the review involving the evaluation for adequacy of interface with State and local governments shall be available to the appropriate State and local governments.

(u) Within 60 days after the effective date of this amendment, each nuclear power reactor licensee shall submit to the NRC plans for coping with emergencies that meet standards in § 50.47(b) and the requirements of Appendix E of this Part.

4. 10 CFR Part 50, Appendix E, is amended as follows:

Appendix E—Emergency Planning and Preparedness for Production and Utilization Facilities¹

Table of Contents

I. Introduction

¹ NRC staff has developed two regulatory guides: E-1, "Emergency Planning for Research Reactors," and E-2, "Emergency Planning in Fuel Cycle Facilities and Plants Licensed Under 10 CFR Parts 50 and 70," and a joint NRC/FEMA report, NUREG-0664, FEMA-REP-1, "Criteria for Preparation and

Footnotes continued on next page

II. The Preliminary Safety Analysis Report
 III. The Final Safety Analysis Report
 IV. Content of Emergency Plans
 V. Implementing Procedures

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 a 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 Zones¹ (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.²

II. The Preliminary Safety Analysis Report

The Preliminary Safety Analysis Report shall contain sufficient information to ensure the acceptability of proposed emergency plans for both onsite areas and the EPZs, with facility design features, site layout, and site location with respect to such

considerations as access routes, surrounding population distributions, land use, and local jurisdictional boundaries for the EPZs in the case of nuclear power reactors as well as the means by which the standards of § 50.47(b) will be met.

As a minimum, the following items shall be described:

A. Onsite and offsite organizations for coping with emergencies and the means for notification, in the event of an emergency, of persons assigned to the emergency organizations.

B. Contacts and arrangements made and documented with local, State, and Federal governmental agencies with responsibility for coping with emergencies, including identification of the principal agencies.

C. Protective measures to be taken within the site boundary and within each EPZ to protect health and safety in the event of an accident; procedures by which these measures are to be carried out (e.g., in the case of an evacuation, who authorizes the evacuation, how the public is to be notified and instructed, how the evacuation is to be carried out); and the expected response of offsite agencies in the event of an emergency.

(D) Features of the facility to be provided for onsite emergency first aid and decontamination and for emergency transportation of onsite individuals to offsite treatment facilities.

E. Provisions to be made for emergency treatment at offsite facilities of individuals injured as a result of licensed activities.

F. Provisions for a training program for employees of the licensee, including those who are assigned specific authority and responsibility in the event of an emergency, and for other persons who are not employees of the licensee but whose assistance may be needed in the event of a radiological emergency.

G. A preliminary analysis that projects the time and means to be employed in the notification of State and local governments and the public in the event of an emergency. A nuclear power plant applicant shall perform a preliminary analysis of the time required to evacuate various sectors and distances within the plume exposure pathway EPZ for transient and permanent populations, noting major impediments to the evacuation or taking of protective actions.

H. A preliminary analysis reflecting the need to include facilities, systems, and methods for identifying the degree of seriousness and potential scope of radiological consequences of emergency situations within and outside the site boundary, including capabilities for dose projection using real-time meteorological information and for dispatch of radiological monitoring teams within the EPZs; and a preliminary analysis reflecting the role of the onsite technical support center and of the near-site emergency operations facility in assessing information, recommending protective action, and disseminating information to the public.

III. The Final Safety Analysis Report

The Final Safety Analysis Report shall contain the plans for coping with emergencies. The plans shall be an

expression of the overall concept of operation; they shall describe the essential elements of advance planning that have been considered and the provisions that have been made to cope with emergency situations. The plans shall incorporate information about the emergency response roles of supporting organizations and offsite agencies. That information shall be sufficient to provide assurance of coordination among the supporting groups and with the licensee.

The plans submitted must include a description of the elements set out in Section IV for the Emergency Planning Zones (EPZs)³ to an extent sufficient to demonstrate that the plans provide reasonable assurance that appropriate measures can and will be taken in the event of an emergency.

IV. Content of Emergency Plans

The applicant's emergency plans shall contain, but not necessarily be limited to, information needed to demonstrate compliance with the elements set forth below, i.e., organization for coping with radiation emergencies, assessment action, activation of emergency organization, notification procedures, emergency facilities and equipment, training, maintaining emergency preparedness, and recovery. In addition, the emergency response plans submitted by an applicant for a nuclear power reactor operating license shall contain information needed to demonstrate compliance with the standards described in Section 50.47(b),⁴ and they will be evaluated against those standards. The nuclear power reactor operating license applicant shall also provide an analysis of the time required to evacuate and for taking other protective actions for various sectors and distances within the plume exposure pathway EPZ for transient and permanent populations.

A. Organization

The organization for coping with radiological emergencies shall be described, including definition of authorities, responsibilities, and duties of individuals assigned to the licensee's emergency organization and the means for notification of such individuals in the event of an emergency. Specifically, the following shall be included:

1. A description of the normal plant operating organization.
2. A description of the onsite emergency response organization with a detailed discussion of:
 - a. Authorities, responsibilities, and duties of the individual(s) who will take charge during an emergency;
 - b. Plant staff emergency assignments;
 - c. Authorities, responsibilities, and duties on an onsite emergency coordinator who shall be in charge of the exchange of information with offsite authorities responsible for coordinating and implementing offsite emergency measures.
3. A description, by position and function to be performed, of the licensee's

¹ These objectives are addressed by specific criteria in NUREG-0864: FEMA-REP-1 entitled "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants for Interim Use and Commencement" January 1980.

Footnotes continued from last page
 Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants for Interim Use and Commencement," January 1980, to provide guidance in developing plans for coping with emergencies. Copies of these documents are available at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. 20555. Copies of these documents may be purchased from the Government Printing Office. Information on current prices may be obtained by writing the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager.

² EPZs for power reactors are discussed in NUREG-0098: EPA 420/1-78-01A "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants," December 1978. The size of the EPZs for a nuclear power plant shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. The size of the EPZs also may be determined on a case-by-case basis for gas-cooled nuclear reactors and for reactors with an authorized power level less than 250 MW thermal. Generally, the plume exposure pathway EPZ for nuclear power plants with an authorized power level greater than 250 MW thermal shall consist of an area about 10 miles (16 km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 km) in radius.

³ Regulatory Guide 1.8 will be used as guidance for the acceptability of research and test reactor emergency response plans.

headquarters personnel who will be sent to the plant site to augment the onsite emergency organization.

4. Identification, by position and function to be performed, of persons within the licensee organization who will be responsible for making offsite dose projections, and a description of how these projections will be made and the results transmitted to State and local authorities, NRC, and other appropriate governmental entities.

5. Identification, by position and function to be performed, of other employees of the licensee with special qualifications for coping with emergency conditions that may arise. Other persons with special qualifications, such as consultants, who are not employees of the licensee and who may be called upon for assistance for emergencies shall also be identified. The special qualifications of these persons shall be described.

6. A description of the local offsite services to be provided in support of the licensee's emergency organization.

7. Identification of, and assistance expected from, appropriate State, local, and Federal agencies with responsibilities for coping with emergencies.

8. Identification of the State and/or local officials responsible for planning for, ordering, and controlling appropriate protective actions, including evacuations when necessary.

B. Assessment Actions

The means to be used for determining the magnitude of and for continuously assessing the impact of the release of radioactive materials shall be described, including emergency action levels that are to be used as criteria for determining the need for notification and participation of local and State agencies, the Commission, and other Federal agencies, and the emergency action levels that are to be used for determining when and what type of protective measures should be considered within and outside the site boundary to protect health and safety. The emergency action levels shall be based on in-plant conditions and instrumentation in addition to onsite and offsite monitoring. These emergency action levels shall be discussed and agreed on by the applicant and State and local governmental authorities and approved by NRC. They shall also be reviewed with the State and local governmental authorities on an annual basis.

C. Activation of Emergency Organization

The entire spectrum of emergency conditions that involve the alerting or activating of progressively larger segments of the total emergency organization shall be described. The communication steps to be taken to alert or activate emergency personnel under each class of emergency shall be described. Emergency action levels (based not only on onsite and offsite radiation monitoring information but also on readings from a number of sensors that indicate a potential emergency, such as the pressure in containment and the response of the Emergency Core Cooling System) for notification of offsite agencies shall be described. The existence, but not the details, of a message authentication scheme shall be

noted for such agencies. The emergency classes defined shall include: (1) notification of unusual events, (2) alert, (3) site area emergency, and (4) general emergency. These classes are further discussed in NU/REG-0664; FEMA-REP-1.

D. Notification Procedures

1. Administrative and physical means for notifying local, State, and Federal officials and agencies and agreements reached with these officials and agencies for the prompt notification of the public and for public evacuation or other protective measures, should they become necessary, shall be described. This description shall include identification of the appropriate officials, by title and agency, of the State and local government agencies within the EPZs.²

2. Provisions shall be described for yearly dissemination to the public within the plume exposure pathway EPZ of basic emergency planning information, such as the methods and times required for public notification and the protective actions planned if an accident occurs, general information as to the nature and effects of radiation, and a listing of local broadcast stations that will be used for dissemination of information during an emergency. Signs or other measures shall also be used to disseminate to any transient population within the plume exposure pathway EPZ appropriate information that would be helpful if an accident occurs.

3. A licensee shall have the capability to notify responsible State and local governmental agencies within 15 minutes after declaring an emergency. The licensee shall demonstrate that the State/local officials have the capability to make a public notification decision promptly on being informed by the licensee of an emergency condition. By July 1, 1981, the nuclear power reactor licensee shall demonstrate that administrative and physical means have been established for alerting and providing prompt instructions to the public within the plume exposure pathway EPZ. The design objective shall be to have the capability to essentially complete the initial notification of the public within the plume exposure pathway EPZ within about 15 minutes. The use of this notification capability will range from immediate notification of the public (within 15 minutes of the time that State and local officials are notified that a situation exists requiring urgent action) to the more likely events where there is substantial time available for the State and local governmental officials to make a judgment whether or not to activate the public notification system. Where there is a decision to activate the notification system, the State and local officials will determine whether to activate the entire notification system simultaneously or in a graduated or staged manner. The responsibility for activating such a public notification system shall remain with the appropriate government authorities.

E. Emergency Facilities and Equipment

Adequate provisions shall be made and described for emergency facilities and equipment, including:

1. Equipment at the site for personnel monitoring:

2. Equipment for determining the magnitude of and for continuously assessing the impact of the release of radioactive materials to the environment;

3. Facilities and supplies at the site for decontamination of onsite individuals;

4. Facilities and medical supplies at the site for appropriate emergency first aid treatment;

5. Arrangements for the services of physicians and other medical personnel qualified to handle radiation emergencies on-site;

6. Arrangements for transportation of contaminated injured individuals from the site to specifically identified treatment facilities outside the site boundary;

7. Arrangements for treatment of individuals injured in support of licensed activities on the site at treatment facilities outside the site boundary;

8. A licensee onsite technical support center and a licensee near-site emergency operations facility from which effective direction can be given and effective control can be exercised during an emergency;

9. At least one onsite and one offsite communications system; each system shall have a backup power source.

All communication plans shall have arrangements for emergencies, including titles and alternates for those in charge at both ends of the communication links and the primary and backup means of communication. Where consistent with the function of the governmental agency, these arrangements will include:

a. Provision for communications with contiguous State/local governments within the plume exposure pathway EPZ. Such communications shall be tested monthly.

b. Provision for communications with Federal emergency response organizations. Such communications systems shall be tested annually.

c. Provision for communications among the nuclear power reactor control room, the onsite technical support center, and the near-site emergency operations facility; and among the nuclear facility, the principal State and local emergency operations centers, and the field assessment teams. Such communications systems shall be tested annually.

d. Provisions for communication by the licensee with NRC Headquarters and the appropriate NRC Regional Office Operations Center from the nuclear power reactor control room, the onsite technical support center, and the near-site emergency operations facility. Such communications shall be tested monthly.

F. Training

The program to provide for (1) the training of employees and exercising, by periodic drills, of radiation emergency plans to ensure that employees of the licensee are familiar with their specific emergency response duties and (2) the participation in the training and drills by other persons whose assistance may be needed in the event of a radiation emergency shall be described. This shall include a description of specialized initial training and periodic retraining programs to be provided to each of the following categories of emergency personnel:

- a. Directors and/or coordinators of the plant emergency organizations
- b. Personnel responsible for accident assessment, including control room shift personnel
- c. Radiological monitoring teams
- d. Fire control teams (fire brigades)
- e. Repair and damage control teams
- f. First aid and rescue teams
- g. Medical support personnel
- h. Licensee's headquarters support personnel

i. Security personnel.
 In addition, a radiological orientation training program shall be made available to local services personnel, e.g., local Civil Defense, local law enforcement personnel, local news media persons.

The plan shall describe provisions for the conduct of emergency preparedness exercises. Exercises shall test the adequacy of timing and content of implementing procedures and methods, test emergency equipment and communication networks, test the public notification system, and ensure that emergency organization personnel are familiar with their duties. Each licensee shall exercise at least annually the emergency plan for each site at which it has one or more power reactors licensed for operation. Both full-scale and small-scale exercises shall be conducted and shall include participation by appropriate State and local government agencies as follows:

1. A full-scale exercise which tests as much of the licensee, State, and local emergency plans as is reasonably achievable without mandatory public participation shall be conducted:

a. For each site at which one or more power reactors are located and licensed for operation, at least once every five years and at a frequency which will enable each State and local government within the plume exposure pathway EPZ to participate in at least one full-scale exercise per year and which will enable each State within the ingestion pathway to participate in at least one full-scale exercise every three years.

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 the issuance of the operating license for full power, which will enable each State and local government within the plume exposure EPZ and each State within the ingestion pathway EPZ to participate.

2. The plan shall also describe provisions for involving Federal emergency response agencies in a full-scale emergency preparedness exercise for each site at which one or more power reactors are located and licensed for operation at least once every 5 years:

3. A small-scale exercise which tests the adequacy of communication links, establishes that response agencies understand the emergency action levels, and tests at least one other component (e.g., medical or offsite monitoring) of the offsite emergency response plan for licensee, State, and local emergency plans for jurisdictions within the plume exposure pathway EPZ shall be conducted at each site at which one or more power reactors are located and

licensed for operation each year a full-scale exercise is not conducted which involves the State(s) within the plume exposure pathway EPZ.

All training, including exercises, shall provide for formal critiques in order to identify weak areas that need corrections. Any weaknesses that are identified shall be corrected.

G. Maintaining Emergency Preparedness

Provisions to be employed to ensure that the emergency plan, its implementing procedures, and emergency equipment and supplies are maintained up to date shall be described.

H. Recovery

Criteria to be used to determine when, following an accident, reentry of the facility would be appropriate or when operation could be resumed shall be described.

V. Implementing Procedures

No less than 180 days prior to scheduled issuance of an operating license for a nuclear power reactor or a license to possess nuclear material, 3 copies of each of the applicant's detailed implementing procedures for its emergency plan shall be submitted to the Director of the appropriate NRC Regional Office with 10 copies to the Director of Nuclear Reactor Regulation or, if appropriate, the Director of Nuclear Material Safety and Safeguards. In cases where a decision on an operating license is scheduled less than one year after the effective date of this rule, such implementing procedures shall be submitted as soon as practicable but before full power operation is authorized. Prior to March 1, 1981, licensees who are authorized to operate a nuclear power facility shall submit 3 copies each of the licensee's emergency plan implementing procedures to the Director of the appropriate NRC Regional Office with 10 copies to the Director of Nuclear Reactor Regulation. Three copies each of any changes to maintain these implementing procedures up to date shall be submitted to the same NRC Regional Office with 10 copies to the Director of Nuclear Reactor Regulation or, if appropriate, the Director of Nuclear Material Safety and Safeguards within 30 days of such changes.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

2. Section 70.32 is amended by adding paragraph (i) to read as follows:

§ 70.32 Conditions of Licenses.

(i) Licensees required to submit emergency plans in accordance with § 70.22(i) shall follow and maintain in effect emergency plans approved by the Commission. The licensee may make changes to the approved 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, Section IV, 10 CFR Part 50. The licensee shall

furnish the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the appropriate NRC Regional Office specified in Appendix D, Part 20 of this Chapter, each change within six months after the change is made. Proposed changes that decrease the effectiveness of the approved emergency plan shall not be implemented without prior application to and prior approval by the Commission.

(Sec. 161b, L. and O., Pub. L. 83-703, 88 Stat. 948 (42 U.S.C. 2201); Sec. 207, as amended, Pub. L. 93-438, 88 Stat. 1242, Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5341))

Dated at Washington, D.C. this 11th day of August 1980.

For the Nuclear Regulatory Commission,
 Samuel J. Chalk,
 Secretary of the Commission.

(FR Doc. 80-25247 Filed 8-18-80; 8:48 am)
 BILLING CODE 7590-01-06

10 CFR Part 50

Emergency Planning: Negative Declaration; Finding of no Significant Impact for Effective Rule Changes

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final negative declaration; finding of no significant impact.

SUMMARY: The Nuclear Regulatory Commission's regulations require that the environmental impact of certain regulatory actions, including substantive amendments to 10 CFR Part 50, be evaluated to determine if an environmental impact statement should be prepared. If it is determined an environmental impact statement need not be prepared, a negative declaration will be issued. The NRC has evaluated the environmental impact of the proposed changes to Part 50 dealing with emergency planning requirements for nuclear power plants (published elsewhere in this issue), and has determined that the rule changes will not have a significant impact on the human environment. Therefore, an environmental impact statement will not be prepared, and a negative declaration is being issued.

DATES: The rule changes for emergency planning will become effective November 3, 1980.

ADDRESSES: Copies of the Final Environmental Assessment, NUREG-0685, and the comments received by the Commission may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

Document 5:

10 CFR § 50.47 (prior to 1987 Amendment)

fuel, excluding the cladding surrounding the plenum volume, were to react.

(4) *Coolable geometry.* Calculated changes in core geometry shall be such that the core remains amenable to cooling.

(5) *Long-term cooling.* After any calculated successful initial operation of the ECCS, the calculated core temperature shall be maintained at an acceptably low value and decay heat shall be removed for the extended period of time required by the long-lived radioactivity remaining in the core.

(c) As used in this section: (1) Loss-of-coolant accidents (LOCA's) are hypothetical accidents that would result from the loss of reactor coolant, at a rate in excess of the capability of the reactor coolant makeup system, from breaks in pipes in the reactor coolant pressure boundary up to and including a break equivalent in size to the double-ended rupture of the largest pipe in the reactor coolant system.

(2) An evaluation model is the calculational framework for evaluating the behavior of the reactor system during a postulated loss-of-coolant accident (LOCA). It includes one or more computer programs and all other information necessary for application of the calculational framework to a specific LOCA, such as mathematical models used, assumptions included in the programs, procedure for treating the program input and output information, specification of those portions of analysis not included in computer programs, values of parameters, and all other information necessary to specify the calculational procedure.

(d) The requirements of this section are in addition to any other requirements applicable to ECCS set forth in this part. The criteria set forth in paragraph (b), with cooling performance calculated in accordance with an acceptable evaluation model, are in implementation of the general requirements with respect to ECCS cooling performance design set forth in this part, including in particular Criterion 35 of Appendix A.

[39 FR 1002, Jan. 4, 1974, as amended at 39 FR 27121, July 25, 1974; 40 FR 8789, Mar. 3, 1975]

§ 50.47 Emergency plans.

(a)(1) Except as provided in paragraph (d) of this section, no operating license for a nuclear power reactor will be issued unless a finding is made by NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

(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 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 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.

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

(1) Primary responsibilities for emergency response by the nuclear facility licensee and by State and local organizations within the Emergency Planning Zones have been assigned, the emergency responsibilities of the various supporting organizations have been specifically established, and each principal response organization has staff to respond and to augment its initial response on a continuous basis.

(2) On-shift facility licensee responsibilities for emergency response are unambiguously defined, adequate staffing to provide initial facility accident response in key functional areas is maintained at all times, timely augmentation of response capabilities is available and the interfaces among various onsite response activities and offsite support and response activities are specified.

(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.

(4) A standard emergency classification and action level scheme, the bases of which include facility system and effluent parameters, is in use by the nuclear facility licensee, and State and local response plans call for reliance on information provided by facility licensees for determinations of minimum initial offsite response measures.

(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.

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

(7) Information is made available to the public on a periodic basis on how they will be notified and what their initial actions should be in an emergency (e.g., listening to a local broadcast station and remaining indoors), the principal points of contact with the news media for dissemination of information during an emergency (including the physical location or locations) are established in advance, and procedures for coordinated dissemination of information to the public are established.

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

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

(10) A range of protective actions have been developed for the plume exposure pathway EPZ for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

(11) Means for controlling radiological exposures, in an emergency, are established for emergency workers. The means for controlling radiological exposures shall include exposure guidelines consistent with EPA Emergency Worker and Lifesaving Activity Protective Action Guides.

(12) Arrangements are made for medical services for contaminated injured individuals.

(13) General plans for recovery and reentry are developed.

(14) Periodic exercises are (will be) conducted to evaluate major portions of emergency response capabilities, periodic drills are (will be) conducted to develop and maintain key skills, and deficiencies identified as a result of exercises or drills are (will be) corrected.

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

(16) Responsibilities for plan development and review and for distribution of emergency plans are established, and planners are properly trained.

(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.

(2) Generally, the plume exposure pathway EPZ for nuclear power plants shall consist of an area about 10 miles (16 km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 km) in radius. The

exact size and configuration of the EPZs surrounding a particular nuclear power reactor shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. The size of the EPZs also may be determined on a case-by-case basis for gas-cooled nuclear reactors and for reactors with an authorized power level less than 250 MW thermal. The plans for the ingestion pathway shall focus on such actions as are appropriate to protect the food ingestion pathway.

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, 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 assessment of the applicant's emergency plans against the pertinent standards in paragraph (b) of this section and Appendix E of this part.

(Sec. 161 b., l., and o., Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); sec. 201, as amended, Pub. L. 93-438, 88 Stat. 1242, Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841))

[45 FR 55409, Aug. 8, 1980, as amended at 47 FR 30235, July 13, 1982; 47 FR 40537, Sept. 15, 1982; 49 FR 27736, July 6, 1984; 50 FR 19324, May 8, 1985]

§ 50.48 Fire protection.

(a) Each operating nuclear power plant shall have a fire protection plan that satisfies Criterion 3 of Appendix A to this part. This fire protection plan shall describe the overall fire pro-

tection program for the facility, identify the various positions within the licensee's organization that are responsible for the program, state the authorities that are delegated to each of these positions to implement those responsibilities, and outline the plans for fire protection, fire detection and suppression capability, and limitation of fire damage. The plan shall also describe specific features necessary to implement the program described above, such as administrative controls and personnel requirements for fire prevention and manual fire suppression activities, automatic and manually operated fire detection and suppression systems, and the means to limit fire damage to structures, systems, or components important to safety so that the capability to safely shut down the plant is ensured.³

(b) Appendix R to this part establishes fire protection features required to satisfy Criterion 3 of Appendix A to this part with respect to certain generic issues for nuclear power plants licensed to operate prior to January 1, 1979. Except for the requirements of Sections III.G, III.J, and III.O, the provisions of Appendix R to this part shall not be applicable to nuclear power plants licensed to operate prior to January 1, 1979, to the extent that fire protection features proposed or implemented by the licensee have been accepted by the NRC staff as satisfying the provisions of Appendix A to Branch Technical Position BTP APCS 9.5-1⁴ reflected in staff fire

¹ Basic fire protection guidance for nuclear power plants is contained in two NRC documents:

• Branch Technical Position Auxiliary Power Conversion System Branch BTP APCS 9.5-1, "Guidelines for Fire Protection for Nuclear Power Plants," for new plants docketed after July 1, 1976, dated May 1976.

• Appendix A to BTP APCS 9.5-1, "Guidelines for Fire Protection for Nuclear Power Plants Docketed Prior to July 1, 1976," for plants that were operating or under various stages of design or construction before July 1, 1976, dated August 23, 1976.

Also see Note 4.

³ Clarification and guidance with respect to permissible alternatives to satisfy Appen-

Continued

Document 6:

10 CFR Part 50, Appendix E (prior to 1987 Amendment)

II. APPLICANTS WHICH ARE NEWLY FORMED ENTITIES

A. Applications for construction permits

1. *Estimate of construction costs.* The information that will normally be required of applicants which are newly formed entities will not differ in scope from that required of established organizations. Accordingly, applicants should submit estimates as described above for established organizations.

2. *Source of construction funds.* The application should specifically identify the source or sources upon which the applicant relies for the funds necessary to pay the cost of constructing the facility, and the amount to be obtained from each. With respect to each source, the application should describe in detail the applicant's legal and financial relationships with its stockholders, corporate affiliates, or others (such as financial institutions) upon which the applicant is relying for financial assistance. If the sources of funds relied upon include parent companies or other corporate affiliates, information to support the financial capability of each such company or affiliate to meet its commitments to the applicant should be set forth in the application. This information should be of the same kind and scope as would be required if the parent companies or affiliates were in fact the applicant. Ordinarily, it will be necessary that copies of agreements or contracts among the companies be submitted.⁴

As noted earlier in this appendix, an applicant which is a newly formed entity will normally not be in a position to submit the usual types of balance sheets and income statements reflecting the results of prior operations. The applicant should, however, include in its application a statement of its assets, liabilities, and capital structure as of the date of the application.

III. ANNUAL FINANCIAL STATEMENT

Each holder of a construction permit for a production or utilization facility of a type described in § 50.21(b) or § 50.22, or a testing facility is required by § 50.7(b) to file its annual financial report with the Commission at the time of issuance thereof. This requirement does not apply to licensees or holders of construction permits for medical and research reactors.

IV. ADDITIONAL INFORMATION

The Commission may, from time to time, request the applicant, whether an established organization or newly formed entity, to submit additional or more detailed information respecting its financial arrangements more detailed information respecting its financial arrangements and status of funds if such information is deemed neces-

sary to enable the Commission to determine an applicant's financial qualifications for the license.
[49 FR 35753, Sept. 12, 1984, as amended at 50 FR 18853, May 3, 1985]

APPENDIX D—(Reserved)

APPENDIX E—EMERGENCY PLANNING AND PREPAREDNESS FOR PRODUCTION AND UTILIZATION FACILITIES

Table of Contents

- I. Introduction
- II. The Preliminary Safety Analysis Report
- III. The Final Safety Analysis Report
- IV. Content of Emergency Plans
- V. Implementing Procedures

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 Zones¹ (EPZs) for facilities other than

¹EPZs for power reactors are discussed in NUREG-0396; EPA 520/1-78-016, "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants," December 1978. The size of the EPZs for a nuclear power plant shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. The size of the EPZs also may be determined on a case-by-case basis for gas-cooled nuclear reactors and for reactors with an authorized power level less than 250 MW thermal. Generally, the plume exposure pathway EPZ for nuclear power plants

Continued

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.¹

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.

II. THE PRELIMINARY SAFETY ANALYSIS REPORT

The Preliminary Safety Analysis Report shall contain sufficient information to ensure the compatibility of proposed emergency plans for both onsite areas and the EPZs, with facility design features, site layout, and site location with respect to such considerations as access routes, surrounding population distributions, land use, and local jurisdictional boundaries for the EPZs in the case of nuclear power reactors as well as the means by which the standards of § 50.47(b) will be met.

As a minimum, the following items shall be described:

A. Onsite and offsite organizations for coping with emergencies and the means for notification, in the event of an emergency, of persons assigned to the emergency organizations.

B. Contacts and arrangements made and documented with local, State, and Federal governmental agencies with responsibility for coping with emergencies, including identification of the principal agencies.

C. Protective measures to be taken within the site boundary and within each EPZ to protect health and safety in the event of an accident; procedures by which these measures are to be carried out (e.g., in the case of an evacuation, who authorizes the evacuation, how the public is to be notified and instructed, how the evacuation is to be carried out); and the expected response of offsite agencies in the event of an emergency.

D. Features of the facility to be provided for onsite emergency first aid and decontamination and for emergency transporta-

tion of onsite individuals to offsite treatment facilities.

E. Provisions to be made for emergency treatment at offsite facilities of individuals injured as a result of licensed activities.

F. Provisions for a training program for employees of the licensee, including those who are assigned specific authority and responsibility in the event of an emergency, and for other persons who are not employees of the licensee but whose assistance may be needed in the event of a radiological emergency.

G. A preliminary analysis that projects the time and means to be employed in the notification of State and local governments and the public in the event of an emergency. A nuclear power plant applicant shall perform a preliminary analysis of the time required to evacuate various sectors and distances within the plume exposure pathway EPZ for transient and permanent populations, noting major impediments to the evacuation or taking of protective actions.

H. A preliminary analysis reflecting the need to include facilities, systems, and methods for identifying the degree of seriousness and potential scope of radiological consequences of emergency situations within and outside the site boundary, including capabilities for dose projection using real-time meteorological information and for dispatch of radiological monitoring teams within the EPZs; and a preliminary analysis reflecting the role of the onsite technical support center and of the near-site emergency operations facility in assessing information, recommending protective action, and disseminating information to the public.

III. THE FINAL SAFETY ANALYSIS REPORT

The Final Safety Analysis Report shall contain the plans for coping with emergencies. The plans shall be an expression of the overall concept of operation; they shall describe the essential elements of advance planning that have been considered and the provisions that have been made to cope with emergency situations. The plans shall incorporate information about the emergency response roles of supporting organizations and offsite agencies. That information shall be sufficient to provide assurance of coordination among the supporting groups and with the licensee.

The plans submitted must include a description of the elements set out in Section IV for the Emergency Planning Zones (EPZs) to an extent sufficient to demonstrate that the plans provide reasonable assurance that adequate protective measures can and will be taken in the event of an emergency.

with an authorized power level greater than 250 MW thermal shall consist of an area about 10 miles (16 km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 km) in radius.

¹Regulatory Guide 2.6 will be used as guidance for the acceptability of research and test reactor emergency response plans.

IV. CONTENT OF EMERGENCY PLANS

The applicant's emergency plans shall contain, but not necessarily be limited to, information needed to demonstrate compliance with the elements set forth below, i.e., organization for coping with radiation emergencies, assessment action, activation of emergency organization, notification procedures, emergency facilities and equipment, training, maintaining emergency preparedness, and recovery. In addition, the emergency response plans submitted by an applicant for a nuclear power reactor operating license shall contain information needed to demonstrate compliance with the standards described in § 50.47(b), and they will be evaluated against those standards. The nuclear power reactor operating license applicant shall also provide an analysis of the time required to evacuate and for taking other protective actions for various sectors and distances within the plume exposure pathway EPZ for transient and permanent populations.

A. Organization

The organization for coping with radiological emergencies shall be described, including definition of authorities, responsibilities, and duties of individuals assigned to the licensee's emergency organization and the means for notification of such individuals in the event of an emergency. Specifically, the following shall be included:

1. A description of the normal plant operating organization.
2. A description of the onsite emergency response organization with a detailed discussion of:
 - a. Authorities, responsibilities, and duties of the individual(s) who will take charge during an emergency;
 - b. Plant staff emergency assignments;
 - c. Authorities, responsibilities, and duties on an onsite emergency coordinator who shall be in charge of the exchange of information with offsite authorities responsible for coordinating and implementing offsite emergency measures.
3. A description, by position and function to be performed, of the licensee's headquarters personnel who will be sent to the plant site to augment the onsite emergency organization.
4. Identification, by position and function to be performed, of persons within the licensee organization who will be responsible for making offsite dose projections, and a description of how these projections will be made and the results transmitted to State and local authorities, NRC, and other appropriate governmental entities.
5. Identification, by position and function to be performed, of other employees of the licensee with special qualifications for coping with emergency conditions that may

arise. Other persons with special qualifications, such as consultants, who are not employees of the licensee and who may be called upon for assistance for emergencies shall also be identified. The special qualifications of these persons shall be described.

6. A description of the local offsite services to be provided in support of the licensee's emergency organization.

7. Identification of, and assistance expected from, appropriate State, local, and Federal agencies with responsibilities for coping with emergencies.

8. Identification of the State and/or local officials responsible for planning for, ordering, and controlling appropriate protective actions, including evacuations when necessary.

B. Assessment Actions

The means to be used for determining the magnitude of and for continually assessing the impact of the release of radioactive materials shall be described, including emergency action levels that are to be used as criteria for determining the need for notification and participation of local and State agencies, the Commission, and other Federal agencies, and the emergency action levels that are to be used for determining when and what type of protective measures should be considered within and outside the site boundary to protect health and safety. The emergency action levels shall be based on in-plant conditions and instrumentation in addition to onsite and offsite monitoring. These emergency action levels shall be discussed and agreed on by the applicant and State and local governmental authorities and approved by NRC. They shall also be reviewed with the State and local governmental authorities on an annual basis.

C. Activation of Emergency Organization

The entire spectrum of emergency conditions that involve the alerting or activating of progressively larger segments of the total emergency organization shall be described. The communication steps to be taken to alert or activate emergency personnel under each class of emergency shall be described. Emergency action levels (based not only on onsite and offsite radiation monitoring information but also on readings from a number of sensors that indicate a potential emergency, such as the pressure in containment and the response of the Emergency Core Cooling System) for notification of offsite agencies shall be described. The existence, but not the details, of a message authentication scheme shall be noted for such agencies. The emergency classes defined shall include: (1) notification of unusual events, (2) alert, (3) site area emergency, and (4) general emergency. These classes

are further discussed in NUREG-0654; FEMA-REP-1.

D. Notification Procedures

1. Administrative and physical means for notifying local, State, and Federal officials and agencies and agreements reached with these officials and agencies for the prompt notification of the public and for public evacuation or other protective measures, should they become necessary, shall be described. This description shall include identification of the appropriate officials, by title and agency, of the State and local government agencies within the EPZs.¹

2. Provisions shall be described for yearly dissemination to the public within the plume exposure pathway EPZ of basic emergency planning information, such as the methods and times required for public notification and the protective actions planned if an accident occurs, general information as to the nature and effects of radiation, and a listing of local broadcast stations that will be used for dissemination of information during an emergency. Signs or other measures shall also be used to disseminate to any transient population within the plume exposure pathway EPZ appropriate information that would be helpful if an accident occurs.

3. A licensee shall have the capability to notify responsible State and local governmental agencies within 15 minutes after declaring an emergency. The licensee shall demonstrate that the State/local officials have the capability to make a public notification decision promptly on being informed by the licensee of an emergency condition. By February 1, 1982, each nuclear power reactor licensee shall demonstrate that administrative and physical means have been established for alerting and providing prompt instructions to the public within the plume exposure pathway EPZ. The four-month period in 10 CFR 50.54(s)(2) for the correction of emergency plan deficiencies shall not apply to the initial installation of this public notification system that is required by February 1, 1982. The four-month period will apply to correction of deficiencies identified during the initial installation and testing of the prompt public notification systems as well as those deficiencies discovered thereafter. The design objective of the prompt public notification system shall be to have the capability to essentially complete the initial notification of the public within the plume exposure pathway EPZ within about 15 minutes. The use of this notification capability will range from immediate notification of the public (within 15 minutes of the time that State and local officials are notified that a situation exists requiring urgent action) to the more likely

events where there is substantial time available for the State and local governmental officials to make a judgment whether or not to activate the public notification system. Where there is a decision to activate the notification system, the State and local officials will determine whether to activate the entire notification system simultaneously or in a graduated or staged manner. The responsibility for activating such a public notification system shall remain with the appropriate governmental authorities.

E. Emergency Facilities and Equipment

Adequate provisions shall be made and described for emergency facilities and equipment, including:

1. Equipment at the site for personnel monitoring;
 2. Equipment for determining the magnitude of and for continuously assessing the impact of the release of radioactive materials to the environment;
 3. Facilities and supplies at the site for decontamination of onsite individuals;
 4. Facilities and medical supplies at the site for appropriate emergency first aid treatment;
 5. Arrangements for the services of physicians and other medical personnel qualified to handle radiation emergencies on-site;
 6. Arrangements for transportation of contaminated injured individuals from the site to specifically identified treatment facilities outside the site boundary;
 7. Arrangements for treatment of individuals injured in support of licensed activities on the site at treatment facilities outside the site boundary;
 8. A licensee onsite technical support center and a licensee near-site emergency operations facility from which effective direction can be given and effective control can be exercised during an emergency;
 9. At least one onsite and one offsite communications system; each system shall have a backup power source.
- All communication plans shall have arrangements for emergencies, including titles and alternates for those in charge at both ends of the communication links and the primary and backup means of communication. Where consistent with the function of the governmental agency, these arrangements will include:
- a. Provision for communications with contiguous State/local governments within the plume exposure pathway EPZ. Such communications shall be tested monthly.
 - b. Provision for communications with Federal emergency response organizations. Such communications systems shall be tested annually.
 - c. Provision for communications among the nuclear power reactor control room, the onsite technical support center, and the

¹See footnote 1 to section I.

near-site emergency operations facility; and among the nuclear facility, the principal State and local emergency operations centers, and the field assessment teams. Such communications systems shall be tested annually.

d. Provisions for communications by the licensee with NRC Headquarters and the appropriate NRC Regional Office Operations Center from the nuclear power reactor control room, the onsite technical support center, and the near-site emergency operations facility. Such communications shall be tested monthly.

F. Training.

The program to provide for (1) the training of employees and exercising, by periodic drills, of radiation emergency plans to ensure that employees of the licensee are familiar with their specific emergency response duties, and (2) the participation in the training and drills by other persons whose assistance may be needed in the event of a radiation emergency shall be described. This shall include a description of specialized initial training and periodic retraining programs to be provided to each of the following categories of emergency personnel:

- a. Directors and/or coordinators of the plant emergency organization;
- b. Personnel responsible for accident assessment, including control room shift personnel;
- c. Radiological monitoring teams;
- d. Fire control teams (fire brigades);
- e. Repair and damage control teams;
- f. First aid and rescue teams;
- g. Medical support personnel;
- h. Licensee's headquarters support personnel;
- i. Security personnel.

In addition, a radiological orientation training program shall be made available to local services personnel; e.g., local emergency services/Civil Defense, local law enforcement personnel, local news media persons.

The plan shall describe provisions for the conduct of emergency preparedness exercises as follows: Exercises shall test the adequacy of timing and content of implementing procedures and methods, test emergency equipment and communications networks, test the public notification system, and ensure that emergency organization personnel are familiar with their duties.²

1. A full participation³ exercise which tests as much of the licensee, State and

² Use of site specific simulators or computers is acceptable for any exercise.

³ "Full participation" when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite local and State authorities and li-

local emergency plans as is reasonably achievable without mandatory public participation shall be conducted for each site at which a power reactor is located for which the first operating license for that site is issued after July 13, 1982. This exercise shall be conducted within 1 year before the issuance of the first operating license for full power and prior to operation above 5% of rated power of the first reactor, and shall include participation by each State and local government within the plume exposure pathway EPZ and each State within the ingestion exposure pathway EPZ.

2. Each licensee at each site shall annually exercise its emergency plan.

3. Each licensee at each site shall exercise with offsite authorities such that the State and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation⁴ by States and local governments, within the plume exposure pathway EPZ. State and local governments that have fully participated in a joint exercise since October 1, 1982, are eligible to fully participate in emergency preparedness exercises on a biennial frequency. The level of participation shall be as follows:

(a) A State shall at least partially participate in each offsite exercise at each site.

(b) A State shall fully participate in at least one offsite exercise every 2 years.

(c) At least once every 7 years, all States within the plume exposure pathway EPZ for a given site must fully participate in an offsite exercise for that site. This exercise must also involve full participation by local governments within the plume exposure pathway EPZ.

(d) Partial participation by a local government during an offsite exercise for a site is acceptable only when the local government

licensee personnel physically and actively take part in testing their integrated capability to adequately access and respond to an accident at a commercial nuclear power plant. "Full participation" includes testing the major observable portions of the onsite and offsite emergency plans and mobilization of State, local and licensee personnel and other resources in sufficient numbers to verify the capability to respond to the accident scenario.

⁴ "Partial participation" when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite authorities shall actively take part in the exercise sufficient to test direction and control functions; i.e., (a) protective action decision making related to emergency action levels, and (b) communication capabilities among affected State and local authorities and the licensee.

is fully participating in a biennial exercise at another site.

(e) Each State within any ingestion exposure pathway EPZ shall exercise its plans and preparedness related to ingestion exposure pathway measures at least once every 5 years.

(f) Licensees shall enable any State or local government located within the plume exposure pathway EPZ to participate in annual exercises when requested by such State or local government.

4. Remedial exercises will be required if the emergency plan is not satisfactorily tested during the biennial exercise, such that NRC, in consultation with FEMA, cannot find reasonable assurance that adequate protective measures can be taken in the event to a radiological emergency. The extent of State and local participation in remedial exercises must be sufficient to show that appropriate corrective measures have been taken regarding the elements of the plan not properly tested in the previous exercises.

5. All training, including exercises, shall provide for formal critiques in order to identify weak or deficient areas that need correction. Any weaknesses or deficiencies that are identified shall be corrected.

G. Maintaining Emergency Preparedness

Provisions to be employed to ensure that the emergency plan, its implementing procedures, and emergency equipment and supplies are maintained up to date shall be described.

H. Recovery

Criteria to be used to determine when, following an accident, reentry of the facility would be appropriate or when operation could be resumed shall be described.

V. IMPLEMENTING PROCEDURES

No less than 180 days prior to the scheduled issuance of an operating license for a nuclear power reactor or a license to possess nuclear material one copy of the applicant's detailed implementing procedures for its emergency plan shall be submitted to the Administrator of the appropriate NRC Regional Office, specified in Appendix D of Part 20 of this chapter and two copies are to be sent to the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Licensees who are authorized to operate a nuclear power facility shall submit one copy of any changes to the emergency plan or procedures to the Administrator of the appropriate NRC Regional Office, specified in Appendix D, 10 CFR Part 20, and two copies to the Document Control Desk within 30 days of such changes.

(Secs. 161b, 1, and c, Pub. L. 83-703; 68 Stat. 948 (42 U.S.C. 2201); sec. 201, as amended, Pub. L. 93-438, 88 Stat. 1242, Pub. L. 94-79 (42 U.S.C. 5841))

[45 FR 55410, Aug. 19, 1980; 46 FR 28839, May 29, 1981, as amended at 46 FR 63032, Dec. 30, 1981; 47 FR 30236, July 13, 1982; 47 FR 57671, Dec. 28, 1982; 49 FR 27736, July 6, 1984]

APPENDIX F—POLICY RELATING TO THE SITING OF FUEL REPROCESSING PLANTS AND RELATED WASTE MANAGEMENT FACILITIES

1. Public health and safety considerations relating to licensed fuel reprocessing plants do not require that such facilities be located on land owned and controlled by the Federal Government. Such plants, including the facilities for the temporary storage of high-level radioactive wastes, may be located on privately owned property.

2. A fuel reprocessing plant's inventory of high-level liquid radioactive wastes will be limited to that produced in the prior 5 years. (For the purpose of this statement of policy, "high-level liquid radioactive wastes" means those aqueous wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuels.) High-level liquid radioactive wastes shall be converted to a dry solid as required to comply with this inventory limitation, and placed in a sealed container prior to transfer to a Federal repository in a shipping cask meeting the requirements of 10 CFR Part 71. The dry solid shall be chemically, thermal, and radiolytically stable to the extent that the equilibrium pressure in the sealed container will not exceed the safe operating pressure for that container during the period from canning through a minimum of 90 days after receipt (transfer of physical custody) at the Federal repository. All of these high-level radioactive wastes shall be transferred to a Federal repository no later than 10 years following separation of fission products from the irradiated fuel. Upon receipt, the Federal repository will assume permanent custody of these radioactive waste materials although industry will pay the Federal Government a charge which together with interest on unexpended balances will be designed to defray all costs of disposal and perpetual surveillance, the Department of Energy will take title to the radioactive waste material upon transfer to a Federal repository. Before retirement of the reprocessing plant from operational status and before termination of licensing pursuant to § 50.82, transfer of all such wastes to a Fed-

Document 7:

Nuclear Regulatory Commission, Proposed Rule,
Licensing of Nuclear Power Plants Where
State and/or Local Governments Decline To
Cooperate in Off-site Emergency Planning,
52 Fed. Reg. 6980-87 (March 6, 1987)

Proposed Rules

Federal Register

Vol. 52, No. 44

Friday, March 6, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rule.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 912

Grapefruit Grown in the Indian River District in Florida; Order Directing Referendum Be Conducted; Determination of Representative Period for Voter Eligibility; and Designation of Referendum Agents To Conduct the Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among growers of Indian River grapefruit grown in Florida to determine whether they favor continuance of the marketing order program.

DATES: Referendum period March 23 through April 17, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cloffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447-0887.

SUPPLEMENTARY INFORMATION: Pursuant to Order No. 912, as amended (7 CFR Part 912), and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), it is hereby directed that a referendum be conducted within the period March 23 through April 17, 1987, among the growers who, during the period August 1, 1985, through July 31, 1986 (which period is hereby determined to be a representative period for the purposes of such referendum), were engaged, in the State of Florida, in the production of grapefruit covered by the said amended marketing agreement and order for market in fresh form to ascertain whether continuance of the said amended marketing order is favored by the growers.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining

whether growers favor continuance of marketing order programs. The Secretary would consider termination of the order if less than two-thirds of the growers of Indian River grapefruit voting in the referendum and growers of less than two-thirds of the volume of such fruit represented in the referendum favor continuance. However, in evaluating the merits of continuance versus termination, the Secretary will not only consider the results of the continuance referendum but also other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all growers favor termination, and such majority produced for market more than 50 percent of the commodity covered by such order.

John W. Toth, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Florida Citrus Building, P.O. Box 2270 Winter Haven, Florida 32883-2270, and Jacquelyn R. Schlarf, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, are hereby designated as referendum agents of the Secretary of Agriculture to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended" (7 CFR 900.400 *et seq.*).

Copies of the texts of the aforesaid amended marketing order may be examined in the offices of the referendum agents or of the Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250.

Ballots to be cast in the referendum may be obtained from the referendum agents and from their appointees.

Authority: Agricultural Marketing Agreement Act of 1937 as amended, secs. 1-19, 49 Stat. 31, as amended; 7 U.S.C. 601-674.

Date: March 3, 1987.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

(FR Doc. 87-4765 Filed 3-5-87; 8:45 am)

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Licensing of Nuclear Power Plants Where State and/or Local Governments Decline To Cooperate in Offsite Emergency Planning

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is considering whether to amend its rules regarding offsite emergency planning at nuclear power plant sites. The amendment being considered would, in limited circumstances, allow the issuance of a full-power operating license even if the utility cannot meet all of NRC's current emergency planning requirements when, contrary to the Commission's expectations when its emergency planning rules were issued, there is a lack of cooperation by State and/or local governments in the development or implementation of offsite emergency plans. The Commission believes that adequate assurance of public health and safety can be achieved with this approach.

DATE: Comment period expires May 5, 1987.

Comments received after this date will be considered if it is practicable to do so, but assurance of consideration can be given only for comments filed on or before this date.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Marketing and Service Branch. Deliver comments to: Room 3121, 1717 H Street, NW, Washington, DC, between 8:15 a.m. and 5:00 p.m. weekdays. Examine comments received at NRC: Public Document Room, 1717 H Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter G. Crane, Office of the General Counsel, U.S. Nuclear Regulatory

Commission, Washington, DC 20555
Telephone: (202) 634-1465.

SUPPLEMENTARY INFORMATION: In August of 1980, the Commission promulgated revised regulations governing emergency planning and preparedness at nuclear power plant sites (see 10 CFR 50.47 and 10 CFR Part 50, Appendix E). The need for improvements had been demonstrated by the inadequate offsite response to the accident at the Three Mile Island plant in March of 1979. Among other things, these regulations envisioned the development of offsite emergency plans with the cooperation of State and local governments in the vicinity of the reactor site.

The Commission's judgment that the new requirements were a reasonable exercise of Commission authority was premised in part on the Commission's belief that State and local governments would cooperate in the development and implementation of offsite plans. Thus, in response to comments that the proposed new emergency planning rules would vest State and local governments with *de facto* veto authority over plant operation, the Commission responded that "[t]he Commission believes, based on the record created by the public workshops, that State and local officials as partners in this undertaking will endeavor to provide fully for public protection."

In the years since 1980, offsite emergency plans have been completed and successfully exercised at nearly every nuclear power plant site in the United States. In few cases, however, State or local governments have not developed an offsite emergency plan of their own or cooperated with the utility in developing one. This lack of cooperation has even occurred after the affected plant was substantially constructed.

Existing regulations do not on their face require operation license denial where State or local governments do not cooperate in emergency planning. Rather, they permit the Commission to issue an operating license despite deficiencies in emergency planning, provided the deficiencies are "not significant," or that there are "adequate interim compensating actions" (see 10 CFR 50.47(c)(1) and (2)). However, the existing regulations also provide as a basic standard in all cases that "no operating license . . . will be issued [for a power reactor] unless a finding is made that there is reasonable assurance that adequate protective measure can and will be taken in the event of a radiological emergency." *Long Island Lighting Company* (Shoreham Nuclear

Power Station), CLI-86-13, 24 NRC 22 (1986). The absence of State and local governmental cooperation makes it more difficult for utility applicants to demonstrate compliance with the basic emergency planning standard, especially that part of the standard which requires reasonable assurance that adequate protective measures "will be taken." This is especially onerous where a utility is powerless under applicable State or local law to itself implement all aspects of an offsite plan. Thus, in actual practice, under the Commission's existing rules State or local governments may possibly veto full-power operation, even after the plant has been substantially completed, by choosing not to cooperate.

As indicated above, when the Commission's emergency planning requirements were upgraded in August of 1980, the Commission believed that all affected State and local governments would continue to cooperate in emergency planning throughout the life of the license. In the rulemaking initiated by today's notice, the Commission is considering explicitly what regulatory approach it should follow in the future in the event that, contrary to the expectation in August of 1980, a State or local government declines to cooperate in the development or implementation of an offsite emergency plan for whatever reason and, as a result, the Commission may have difficulty finding, as required by existing regulations, that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

Any consideration of possible changes in the Commission's emergency planning requirements must recognize one central and salient fact: That such a change would not alter the Commission's paramount obligation to assure public health and safety. For each license application, the Commission would remain obligated to determine that there is reasonable assurance that the public health and safety will be adequately protected. If the Commission, for whatever reason, cannot find that the statutory standard has been met, then the license cannot be issued.

In particular, the Commission is considering two options. The first option would be to leave the existing regulations unchanged. This option provides one method to assure that offsite emergency plans will be adequate. However, this option depends on the continued cooperation of State and local governments in emergency planning and preparedness. The option

has severe non-safety consequences where States and local governments choose not to cooperate, especially after a plant has been substantially constructed. Significant policy questions of equity and fairness are presented where a utility has substantially completed construction and committed substantial resources to a nuclear plant and then, after it is far too late realistically for the utility to reverse course, the State or local government opposes the plant by non-cooperation in offsite emergency planning. A forced abandonment of a completed nuclear plant for which billions for dollars have been invested also poses obvious serious financial consequences to the utility, ratepayers and taxpayers. Finally, at least in situations where non-cooperation in offsite emergency planning is motivated by safety issues, vesting State or local governments with *de facto* veto authority over full-power operation is inconsistent with the fundamental thrust of the Atomic Energy Act whereby the Commission is given exclusive *de jure* authority to license nuclear power plants and to impose radiological safety requirements for their construction and operation.

The second option under consideration by this rulemaking would be an amendment to the Commission's emergency planning regulations which would provide more flexibility than do the existing regulations to deal with the circumstance of non-cooperation. The essence of this option would be a new subsection (e) of 10 CFR 50.47 to read as follows:

(e) The Commission may issue a full power operating license for a facility notwithstanding non-compliance with other requirements of this section and 10 CFR Part 50, Appendix E if non-compliance arises substantially from a lack of participation in the development or implementation of offsite emergency planning by a State or local government, and if the applicant demonstrates to the Commission's satisfaction that: (1) The non-compliance could be remedied, or adequately compensated for, by reasonable State or local governmental cooperation; (2) applicant has made a good faith and sustained effort to obtain the cooperation of the necessary governmental entities; (3) applicant's offsite emergency plan includes effective measures to compensate for the lack of cooperation which are reasonable and achievable under the circumstances and which take into account a likely State or local response to an actual emergency; and (4) applicant has provided copies of the offsite plan to all governments which would have otherwise participated in its preparation or implementation and has assured them that it stands ready to cooperate should they change their position.

If this option were adopted, the Commission expects that an adjudicatory record would need to be developed to substantiate a utility's claims that the preconditions for operation are fulfilled if any interested person or affected State or local government claims, with reasonable specificity and basis, that they are not fulfilled. Moreover, the Commission emphasizes that it would not be possible under this option to license a plant for full power operation unless the applicant demonstrates that adequate offsite emergency planning is achievable and all other aspects of the foregoing criteria are satisfied. This rulemaking is intended only to address non-cooperation by responsible State or local governments; it does not provide a remedy or excuse for other offsite emergency planning problems.

The additional flexibility provided by such a rule would obviously minimize the consequences from the lack of governmental cooperation in the development or implementation of offsite emergency plans. The more important and difficult question is whether or to what extent these non-safety consequences should be a matter of concern to the Commission in setting pre-licensing emergency planning requirements.

The Commission believes that the 1980 rule and the Commission's explanation of the basis and purpose for the 1980 rule in the rule preamble (45 FR 55402, August 19, 1980) reflect inconsistent concepts as to the proper place of offsite emergency planning and non-safety costs in the NRC safety licensing program. On the one hand, the Commission stated that the new requirements, as well as proper siting and engineered safety features, were needed to protect public health and safety. Taken in isolation, these statements can be read as evidencing a Commission decision that emergency planning and preparedness as provided in those revised rules were to be treated as measures essential to safe operation of nuclear facilities and therefore to be imposed rigorously without regard to equity or cost.

On the other hand, the Commission rejected an option in the rulemaking that could have led to automatic plant shutdown if adequate plans were not filed because of commenters' concerns about "unnecessarily harsh economic and social consequences to State and local governments, utilities, and the public." Operating plants were given very substantial grace periods to come into compliance before shutdown would be considered or ordered. These

provisions are not consistent with the concept that emergency planning and preparedness are as important to safety as such engineered safeguards as reactor containments or emergency core cooling systems. The Commission does not ordinarily permit any extended grace period for a large power reactor to operate without these safeguards, or allow a plant to operate for a significant period without these safeguards because of "harsh economic and social consequences." Rather, these provisions reflect a different concept—that adequate emergency planning and preparedness are needed and important, but that they represent an additional level of public protection that comes into play only after all of the other safety requirements for proper plant design, quality construction, and careful, disciplined operation have been considered, and that therefore some regulatory flexibility is warranted and the costs associated with alternative approaches may be taken into account.

The second more flexible emergency planning concept or approach is also reflected in consistent and repeated Commission pronouncement that the fundamental philosophy or approach of emergency planning is to assure reasonable and achievable dose reduction should an accident occur. *E.g., Long Island Lighting Company* (Shoreham Nuclear Power Station), *supra*; *Southern California Edison Company* (San Onofre), CLI-83-10, 17 NRC 528, 533 (1988). The existing emergency planning regulations does not require that plans achieve any pre-established minimum dose savings in the event of an accident. For example, approved emergency plans with full State and local governmental cooperation have highly variable evacuation time estimates ranging from several hours to over ten hours and the projected dose savings for such plans would vary widely. Thus the regulation is inherently variable in effect and there are no bright-line, mandatory minimum projected dose savings or evacuation time limits which could be viewed as performance standards for emergency plans in the existing regulation. Moreover, the dose savings achieved by implementation of an emergency plan under adverse conditions, *e.g.*, during or following heavy snow, could be substantially less than under perfect conditions. This variability is consistent with a concept or approach to emergency planning and preparedness that is flexible rather than rigid.

In the Commission's view, the narrow circumstance of non-cooperation by a State or local government in emergency

planning and preparedness addressed by this rule requires the Commission to resolve, for the future, which of the two underlying emergency planning approaches it should follow: a relatively inflexible one, that will require adequate planning and preparedness with little or no concern for fairness or cost; or a more flexible one that focuses on what kind of accident mitigation (dose reduction to the public in the event of an accident) can be reasonably and feasibly accomplished, considering all of the circumstances. If sound safety regulation requires the former, then no rule change is warranted. If the latter, then a change would be in order for, if the fundamental philosophy or approach of emergency planning is reasonable and achievable dose reduction, this may properly be understood in the sense of what is reasonable and feasible for the utility to accomplish under all of the circumstances, including matters which are completely beyond the utility's control.

In the one licensing case to date in which this matter of basic emergency planning philosophy or approach has been considered, the Commission has taken the view that under the existing regulations an adequate plan must achieve dose reductions in the event of an accident that are generally comparable with what might be accomplished with governmental cooperation. *Long Island Lighting Company, supra*. But, as the above discussion makes clear, another regulatory approach is possible which is set out with option 2, and which focuses on what is prudent and achievable dose reduction taking into account lack of governmental cooperation. As noted earlier, the standards in our existing regulations contemplated governmental cooperation in offsite emergency planning and preparedness.

The types of measures, in addition to those normally provided by the licensee, to compensate for the lack of cooperation in planning by State and local governments would include:

- (1) Added plans and procedures detailing compensating measures;
- (2) Added personnel to accompany and advise State and local officials in an actual emergency;
- (3) Facilities and equipment including vehicles, radios, telephone and radiation monitors as required by the plan;
- (4) Special training for personnel implementing compensating measures;
- (5) Arrangements including formalized agreements and contracts for supporting services;
- (6) Close communication with members of the public in the emergency

planning zone (EPZ) to keep them informed of the status and provisions for response:

(7) Providing periodic notification of State and local government personnel of the details of the compensatory measures included in the plan, the arrangements included for their involvement in the event of a real emergency, and the availability of training; and

(8) Offsite exercises that demonstrate implementation of the plan of the extent feasible.

Comments are requested on these alternative approaches to emergency planning. The rule changes in option 2 are not dependent in any way on new information about nuclear plant accident source terms, probabilistic risk assessments, or scientific studies of the risk reduction potential of emergency planning.¹ The option would be based on the consideration of what should be the appropriate underlying philosophy or approach to emergency planning as a precicensing regulatory requirement—a consideration which is prompted by the change in circumstances which have been experienced since the regulations were promulgated in 1980, i.e., the phenomenon, not then expected, of State and local governments, refusing to cooperate in emergency planning.

The practical effects of Commission adoption of option two—a rule change—are difficult to estimate, but the Commission believes that the level of public protection associated with option two would not be significantly different from that provided by the current regulations. First, if a plant began operation under the circumstances permitted by the proposed regulation change, and all administrative and judicial remedies available to plant opponents have been exhausted, it seems reasonable to expect that the governments involved more likely than not would change their position and cooperate in planning. The governments or others may dispute whether planning is adequate, but it would seem fairly indisputable that the adequacy of a plan with cooperation will be enhanced relative to a utility-sponsored plan without it. In these circumstances, the governments and the citizens they

represent would have much to gain and nothing to lose from cooperation.

Second, the Commission believes that State and local governments which have not cooperated in planning will carry out their traditional public health and safety roles and would therefore respond to an accident. It is reasonable to expect that this response would follow a comprehensive utility plan.

Third, the likelihood that State and local governments would cooperate may be bolstered by Title III of the Superfund Amendments and Reauthorization Act of 1980, which requires States to establish State emergency response commissions. The planning and notification requirements enacted in that Act are based on the same philosophy adopted by the Commission in its own emergency planning regulations. In fact, EPA's Chemical Emergency Preparedness Program is compatible in many respects with the Commission's emergency response program, and EPA's Interim Guidance issued in November 1985 (revision 1) specifically cross-references Commission and FEMA guidance on radiological emergency response. (It should be noted, however, that the Superfund amendments do not require that industrial facilities cease operation if a State refuses to establish the required State organization.) Since the Superfund amendments require States to establish emergency response organizations, a change in posture regarding cooperation in emergency planning for nuclear power plants may entail only small additional commitments of government resources.

Moreover, since it will have been established that adequate planning is achievable, and a utility plan will have been required which will include provisions for possible State and local cooperation in the event of an accident, any interim period after commencement of plant operation during which non-cooperating governments may re-evaluate their position may be short. The time period is, moreover, largely under the control of the governments. Not only may the governments accelerate their efforts to develop an improved plan once the plant is licensed, but should the option 2 rule change be adopted by the Commission, it may be reasonable for State or local governments which oppose plant operation to develop adequate contingent emergency plans that would only come into play should the plant be licensed over their objection.

Since an offsite plan developed without State or local cooperation is not likely to be fully exercised, it is necessary in conjunction with option 2

to amend Section F of 10 CFR Part 50, Appendix E, which currently requires that the offsite plan be fully exercised biennially.

The pendency of this proposal is not intended to affect any ongoing reviews or hearings of emergency planning issues under existing regulations, including 10 CFR 50.12.

The Commission is currently pursuing the feasibility of additional changes to emergency planning requirements based on the source term and severe accident programs. The proposal made in this notice is not based on either of these programs.

Backfit Analysis

This amendment does not impose any new requirements on production or utilization facilities; it only provides an alternative method to meet the Commission's emergency planning regulations. The amendment therefore is not a backfit under 10 CFR 50.109 and a backfit analysis is not required.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule is being submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. The proposed rule applies only to nuclear power plant licensees which are electric utility companies dominant in their service areas. These licensees are not "small entities" as set forth in the Regulatory Flexibility Act and do not meet the small business size standards set forth in Small Business Administration regulations in 13 CFR Part 121.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

Environmental Assessment and Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the

¹ If in the future nuclear plant designs are proposed which offer greater protection of the public health and safety than do current designs, then additional rulemaking may be appropriate which examines the need for emergency planning in consideration of the reduced overall risk to the public. In this rulemaking, however, no assumptions are necessarily being made regarding possibly improved plant designs or operations since 1980 when the new emergency planning regulations were issued.

Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The Commission has prepared, in support of this finding, an environmental assessment which is available for inspection and copying, for a fee, at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this regulation. This analysis further examines the costs and benefits of the proposed action and the alternatives considered by the Commission. The analysis is available for inspection and copying, for a fee, at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

For the reasons set out in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the Commission is considering whether it should adopt the following amendments to 10 CFR Part 50:

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 162, 183, 186, 189, 66 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); sec. 201, as amended, 302, 206, 68 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2851 (42 U.S.C. 5851). Section 50.10 also issued under sec. 101, 165, 66 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 68 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91 and 50.92 also issued under Pub. L. 97-415, 90 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 through 50.81 also issued under sec. 194, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 106, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 167, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a)

are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161f, 68 Stat. 949, as amended (42 U.S.C. 2201(f)); and §§ 50.47(e), 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 50.47 is amended by adding a new paragraph (e) to read as follows:

§ 50.47 Emergency plans.

(e) The Commission may issue a full power operating license for a facility notwithstanding non-compliance with other requirements of this section and 10 CFR Part 50, Appendix E if non-compliance arises substantially from a lack of participation in the development or implementation of offsite emergency planning by a State or local government, and if the applicant demonstrates to the Commission's satisfaction that:

(1) The non-compliance could be remedied, or adequately compensated for by reasonable State or local governmental cooperation;

(2) Applicant has made a good faith and sustained effort to obtain the cooperation of the necessary governments;

(3) Applicant's offsite emergency plan includes effective measures to compensate for the lack of cooperation which are reasonable and achievable under the circumstances and which take into account a likely State or local response to an actual emergency; and

(4) Applicant has provided copies of the offsite plan to all governments which would have otherwise participated in its preparation or implementation and has assured them that it stands ready to cooperate should they change their position.

3. In Appendix E, section F is amended by adding a new paragraph 6 to read as follows:

Appendix E—Emergency Planning and Preparedness for Production and Utilization Facilities

F. Training ***

6. Offsite governmental participation in an exercise is not required to the extent an applicant or licensee relies upon 10 CFR 50.47(e). In such cases, an exercise with participation by the applicant or licensee and other cooperating governmental entities shall be held.

The separate views of Commissioner Asseltine follow.

Dated at Washington, DC, this 2nd day of March, 1987.

For the Nuclear Regulatory Commission:
Samuel J. Chalk, Deputy Secretary of the Commission.
Separate Views of Commissioner Asseltine

Emergency planning is essential to protect public health and safety, and the active participation of state and local governments in the planning process is fundamental to adequate emergency planning. These are the lessons we learned from the Three Mile Island accident, and this is the reason the Commission promulgated its emergency planning rules in 1980. However, these lessons seem to have been forgotten by the present Commission. In proposing this rule change, the Commission takes a step back in time to 1978 when emergency planning was relegated to a position of secondary importance because it was thought to be unlikely to ever be necessary. The Commission's proposal allows licensing of a nuclear power plant where there is absolutely no State or local government participation in emergency planning. The Commission thereby undermines the very foundation upon which emergency planning is based. Further, the Commission substitutes for the requirements of the regulations a "best efforts" standard of protection. The Commission is thus willing to accept a level of protection of the public health and safety which is lower than that afforded by the Commission's current regulations. I cannot support a rule which sanctions such an erosion of the Commission's emergency planning requirements.

Nor can I support the Commission's stated justification for this change—that adhering to current safety standards for emergency planning might impose economic costs on the utilities in cases in which, absent state and local government participation, the Commission is unable to make the public health and safety findings required by our current regulations. These adverse economic consequences simply cannot serve as a valid basis for relaxing the Commission's safety regulations and for abandoning the central elements of emergency planning. In the face of the experience of Three Mile Island and more recently at Chernobyl, the Commission should be seeking ways to strengthen our emergency planning requirements and to enhance state and local government preparedness to cope with a serious nuclear accident. That is one of the lessons of Chernobyl being learned by many European countries. Unfortunately, by its action in proposing

this rule, the Commission demonstrates that we in the United States are on the opposite course.

1980 Emergency Planning Rule

Prior to 1979 the Commission had concluded that siting of nuclear power plants coupled with the defense-in-depth approach to design of the plants was adequate to protect the public. The NRC considered the probability of an accident with offsite consequences to be so low as to make emergency planning unnecessary. As a result, there was little planning by state and local authorities to respond to an incident at a nuclear power plant.

In March of 1979 there was an accident at the Three Mile Island plant in Pennsylvania. There had been little planning by the state and local governments responsible for dealing with the emergency, and the response was confused. There were no procedures for coordination among various governments; there were no clear lines of authority; there were no clear procedures for or means to disseminate information; there were no clear procedures for determining whether to take protective action or how to carry it out once it had been decided upon; and few if any of the other elements essential to an effective emergency response existed. Because of the disarray on the part of nearly everyone involved in the response to the TMI accident, people living in the area around the plant did not know what information was accurate and did not know whether it was safe to stay in the area or whether to leave. Most people simply did whatever they thought best.

The Commission realized after this experience that improved advance planning was necessary to deal with similar situations in the future. The TMI accident made it clear that in the case of an emergency with a potential for significant offsite radiation releases there would be insufficient time during the course of an accident to make arrangements to protect the people living around the plants. The Commission recognized that, even if there were no offsite releases, an accident could affect what the state and local governments did in an attempt to protect their citizens. For this reason, the Commission proposed a rule requiring, as a condition of licensing plants, that there be state and local emergency response plans sufficient to meet Commission requirements. (44 FR 75167). The Commission expressly recognized that participation in planning by state and local authorities and coordination between the governments and the licensee was central to effective

emergency planning. The Commission acknowledged that its proposal to view emergency planning being as equivalent to, rather than secondary to, siting and design in public protection departed from the agency's earlier approach to emergency planning. However, the Commission stated:

The Commission's perspective was severely altered by the unexpected sequence of events that occurred at Three Mile Island. The accident showed clearly that the protection provided by siting and engineered safety features must be bolstered by the ability to take protective measures during the course of an accident. The accident also showed clearly that on-site conditions and actions, even if they do not cause significant off-site radiological consequences, will affect the way various State and local entities react to protect the public from danger, real or imagined, associated with the accident. A conclusion the Commission draws from this is that in carrying out its statutory mandate to protect the public health and safety, the Commission must be in a position to know that off-site governmental plans have been reviewed and found adequate. The Commission finds that the public can be protected within the framework of the Atomic Energy Act only if additional attention is given to emergency response planning. (44 FR 75169).

Thus, the Commission found that emergency planning was essential to protect the public and that state and local participation in emergency planning was central to adequate emergency preparedness.

1987 Emergency Planning Rule

The NRC's emergency planning rule has been in effect now for almost seven years. In general, it has worked well. State and local governments, the utilities and the Federal government have all worked together to develop emergency plans for most new and operating plants. However, there have been a few exceptions. The State and local governments responsible for emergency plans for two plants in particular have refused to submit emergency plans for approval or to participate in utility planning. These governments by refusing to participate are making it difficult, if not impossible, for the utilities to meet NRC requirements and to get licenses to operate their plants. This state of affairs has proven extremely frustrating for the Commission. The State and local government positions in these two cases have stretched out the licensing process for plants which the NRC Staff feels are otherwise safe to operate. The Commission's proposed rule is an effort to break the logjam in these two "hostage" plant cases.

The rule provides for an alternative to compliance with NRC requirements in those cases where the inability of the utility to meet the regulations is substantially the result of the failure of State and local governments to participate in the emergency planning process. The rule substitutes for compliance with the regulations a "best efforts" standard. The Commission may license a plant where there is no participation by State and local governments in emergency planning. The utility must instead submit its own plan for Commission approval. The utility must have tried to obtain governmental cooperation. The utility must have done the best it could in developing a plan and measures to compensate for lack of cooperation by government authorities given the circumstances and taking into account participation of the State and local governments in the case of an actual emergency. And, the utility must provide copies of the plan to responsible government entities.

The Commission states that it believes this rule change will not significantly alter the level of protection provided to the public for several reasons: (1) Once the rule goes into effect, non-participating governments are likely to drop their objections and begin to cooperate with emergency planning because they will not longer have any incentive to not cooperate.

(2) State and local governments who have not participated in planning will carry out their responsibilities in the event of an actual emergency.

(3) Title III of the 1986 Superfund Amendments make it more likely that State and local governments will participate.

Unfortunately, the Commission's assertions are either irrelevant, insufficient or based simply on wishful thinking. The Commission's assertion that as a result of this proposed rule State and local governments will suddenly see the light, drop all of their objections and begin to cooperate seems to be based on not much more than wishful thinking. The Commission's third argument relies on the Superfund Amendments which are largely irrelevant to the issues here. The mere fact that the States are required to establish emergency planning commissions to deal with planning for chemical plants and the like has little relevance to whether a State will give up its opposition to participating in site-specific emergency planning for a nuclear power plant. In fact, if anything, the Superfund Amendments cut against the Commission's argument. The

amendments demonstrate Congress' belief that State and local participation in emergency planning is essential. The Commission's second argument is its realism argument which is developed in more detail in the *Shoreham* decision, *Long Island Lighting Company* (Shoreham Nuclear Power Station, Unit 1), CLI-86-13, 24 NRC 22 (1986). Basically the theory is that, even if States and localities are refusing to participate in the planning process, in the event of an actual emergency they will carry out their responsibilities and for lack of a better course will use the utility's plan. The Commission found in *Shoreham* that such an ad hoc response by the governments could be sufficient to protect the public.

In assuming that the governments will in fact participate and that they will use the utility plan as a basis for their response to an emergency, the Commission once again enters the realm of wishful thinking.¹ There is little, if anything, to support this belief. Even if we accept the Commission's assumption, an ad hoc response by the responsible government officials is simply inconsistent with the fundamental precepts of emergency planning and clearly cannot provide the same level of protection as a plan with full cooperation would. An ad hoc response means that there will be no preplanning by the governments. Officials will be forced either to improvise during an accident (something which we know did not work at TMI) or to attempt to carry out a plan with which they are not familiar. They will not have been trained in the elements of the plan or their responsibilities, and they certainly will not have rehearsed their roles.

Emergency plans are very complicated. They must be in order to anticipate the many different situations that might occur during an accident and plan for them. Everyone must be familiar with the plan and his or her responsibilities if these plans are to work smoothly. Thus training and rehearsal are essential, and the Commission's regulations recognize this. If a particular government has not participated in advance planning, none of these fundamental preparatory steps will have been taken, and the governmental response will be less effective.

Another element essential to an effective and efficient emergency response is that the local populace must have confidence in the plan and in those

implementing it. The people must believe that they are being kept accurately informed and that those implementing the plan know what they are doing. Otherwise, they are likely to ignore instructions and do what they think best to protect themselves and their families. An off-the-cuff emergency response like that approved by the Commission in this rule is unlikely to engender the confidence necessary to ensure that the plan really works adequately.

The proposed rule might be less objectionable if it required the Commission to find that reliance only on a utility plan with no State and local participation would in fact provide a level of protection to the public which is equivalent to an emergency preparedness plan with full cooperation. It does not even do that. Under this proposal, whether there is adequate protection will be determined based on what the utility can reasonably accomplish given the lack of government cooperation—a "best efforts" standard.² This means that a plant may be licensed with the core of emergency planning missing, with a less coordinated response than would normally be possible, and where some protective actions might no longer be available. The Commission is willing to accept this reduction in the level of protection of the public.

Rationale for Proposed Rule

What justification does the Commission provide for its willingness to accept a lower standard of public protection? The Commission asserts that the proposed rule is necessary to put emergency planning back into its proper place in the regulatory scheme. The Commission decision on this proposed rule amounts to a repudiation of the Commission's judgment in 1980 that emergency planning was just as important as other safeguards like engineered safety features. The Commission now argues that while emergency planning is important, it is really only of secondary importance. According to this argument, because it is only "an additional level of public protection that comes into play" only in the event that other safeguards fail, the Commission can justifiably take a more flexible approach and waive emergency planning requirements if they cost too much to implement.

² This goes beyond the Commission decision in CLI-86-13 which stated that the Commission's existing regulations require that an adequate plan must achieve dose reductions generally comparable to those possible under a plan with government participation. 24 NRC 22.30.

This new emergency planning philosophy is nothing more than the Commission's pre-1980 philosophy in new trappings. Since emergency planning will only be necessary in the extremely unlikely event that another accident occurs, it is, according to the Commission, of only secondary importance.³ However, the Commission cites no new safety information to support this about-face. In fact the Commission says that the rule is not based on any source term or severe accident research. The Commission states specifically that the rule change is not based on any finding that plants are safer now than they were in 1980 when the present emergency planning rules were issued and when planning was considered to be of primary importance to public protection. The Commission does not dispute its 1980 conclusion that State and local participation is the core of emergency planning and response. In fact the Commission admits the obvious—that an emergency response with governmental participation is better than one without. The Commission could come up with only one piece of information that is different from that available in 1980—in two cases governments have refused to cooperate in the emergency planning process. The Commission says that in 1980 it did not expect that State and local officials would actually refuse to participate. Since there are now cases of noncooperation, the mere fact that governments have refused to participate justifies waiving the central requirements of the emergency planning rule and accepting less protection for the public.

The Commission specifically recognized in 1980 the potential for governmental inaction to affect operation of plants, and the Commission specifically considered and rejected the argument presented by some who commented on the rule that the rule should not be promulgated because of the possibility that inaction by local governments might affect the operation of some reactors. The Commission responded to these commenters by stating that:

³ In support of its relegation of emergency planning to a secondary rule, the Commission cites the fact that in 1980 the Commission allowed existing plants to continue to operate while emergency plans were being developed as support for its theory that emergency planning is less important to safety than other safeguards. Unfortunately, that argument lacks merit. The Commission often provides grace periods for operating plants to come into compliance with new safety requirements. An excellent example is the fire protection rule.

¹ If the governments do not participate, some utilities may not have the legal authority to carry out parts of their plans.

The Commission believes that the potential restriction of plant operation by State and local officials is not significantly different in kind or effect from the means already available under existing law to prohibit reactor operation, such as zoning and land use laws, certification of public convenience and necessity, State financial and rate considerations (10 CFR 90.33(f)), and Federal environmental laws. (45 FR 55404).

The Commission noted that a local entity's support for emergency planning was something that would have to be renewed periodically, but the Commission believed that State and local officials would work with the Federal government and the utilities in planning to protect the public. The Commission recognized the potential that a State or local government could by its inaction affect the operation of nuclear plants and decide that that was not sufficient reason to alter the provisions of the emergency planning rule. Yet now, because the Commission is confronted with two very difficult cases, Seabrook and Shoreham, the Commission is willing to change the rule and waive what it considered in 1980 to be the core of adequate emergency planning. Obviously, the Commission's commitment to emergency planning only lasts as long as it does not get in the way of expeditious licensing of plants.

Narrow Circumstances?

The Commission also attempts to justify its rule change on the ground that the change really only applies in very narrow circumstances. However, the Commission's assertion misses a very important consideration. By allowing a utility to substitute its best efforts for State and local participation in emergency planning, the rule lessens the incentives for these governments to cooperate.* Governments, especially local governments, have limited personnel and resources, and any number of things on which to expend them. It is possible that in some cases these officials may choose to apply their scarce resources to something other than emergency planning if nonparticipation will not affect operation of the plant. The Commission should carefully consider this negative impact before going forward with the proposed rule.

Conclusion

While I can understand the Commission's frustration in dealing with the so-called "hostage" plant situation, I cannot support this rule. Emergency planning is essential to protect the

* In informal comments to the drafters of the proposed rule, FEMA apparently raised this same concern about the proposal.

public in the event of an accident at a nuclear power plant. State and local government participation in the process is essential to ensure that there will be an adequate emergency response and optimum protection of the public. The Commission's proposal undercuts both of these principles. The rule change is based on the concept that emergency planning is of only secondary importance—a concept which should have been unthinkable after TMI and Chernobyl, and accepts the idea that an emergency plan with absolutely no state and local participation is adequate as long as the utility does the best it can. That is simply nonsense. The Commission should not be willing to accept only best efforts solely in order to solve the problem it has with two reactor licensing cases. The Commission should heed the old legal adage "H cases make bad law," when considering whether to adopt a rule which waives requirements important to public protection in order to break the logjam in those two cases.

[FR Doc. 87-4756 Filed 3-5-87; 8:45 am]
BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

(Docket No. 87-NM-10-AD)

Airworthiness Directives; British Aerospace BAC 1-11 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD), applicable to certain Model BAC 1-11 series airplanes, that would require eddy current and ultra sonic inspections of the main landing gear support beam (manacle beams), and repair, if necessary. This action is prompted by a report of the collapse of a right hand main landing gear in service. This failure has been attributed to stress corrosion cracking.

DATE: Comments must be received no later than April 24, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-10-AD, 17900 Pacific Highway South, C-68966, Seattle.

Washington 98168. The applicable service information may be obtained from British Aerospace PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-10-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of the collapse of a right hand main landing gear on a Model BAC 1-11 airplane. The subsequent metallurgical examination disclosed that the landing gear support beam (manacle beam) had suffered severe cracking due to stress

Document 8:

Nuclear Regulatory Commission, Final Rule,
Evaluation of the Adequacy of Off-Site
Emergency Planning for Nuclear Power Plants
at the Operating License Review Stage Where
State and/or Local Governments Decline To
Participate in Off-Site Emergency Planning,
52 Fed. Reg. 42,078-87 (November 3, 1987)

e. Maximum Sales Price Per Pound:

There were a number of comments with respect to the changes in the mohair and wool price support regulations to limit the amount of price support payments based on the sales price per pound for mohair and wool. A number of commentors objected to the deletion of the provision in § 1472.1507 which provided that a bona fide marketing was a "sale based on a reasonably appraised price for wool." Their comments suggest that the price support payments for their speciality wool be based on the full free market value of such speciality wool or the appraised price of such wool in the speciality market for such wool.

The phrase "reasonable appraised price of wool" in § 1472.1507 and a comparable phrase "fair market value for mohair" in § 1468.107(c) were deleted because they were inconsistent provisions and also because they were intended to prevent price support payments to be made where the sales price of the mohair or wool was substantially higher than the reasonable appraised price of wool or the fair market value for mohair in the traditional wool or mohair markets, respectively. In such case the entire sales price would have been ineligible for price support payments. However, these provisions were deleted because CCC/USDA did not wish to make the entire sales proceeds of wool and mohair sold to hobby crafters, hand-spinners, and similar individuals ineligible for price support payments.

Another comment urged that since the premium prices received by the producers on sales of high quality wool to hobby crafters and handspinnners have been used to calculate the national average price for wool, the same premium price should be used to calculate the wool price support payment. The premium prices for high quality wool are included in the determination of the national average market price which is determined by taking the average weighted market price of all wool sold by producers. Section 704 of the Wool Act provides that the price support payments shall be such as the Secretary of Agriculture determines to be sufficient when added to the national average price to equal the price support level for wool. This amount expressed in percentage is applied against the producer sales price to determine the price support payment due the producer. This percentage is applicable to all sales of wool. However, the interim rule would apply the percentage to each sales price up to the maximum sales price determined by DASCO for each marketing year.

There were also comments to the effect that sales by hobby crafters and handspinnners should be considered sales through "normal channels" for high quality wool. We believe this is a matter of semantics. While the point of the comment is true, since only a small fraction of all the wool marketed is sold to hobby crafters and handspinnners, the term "normal channels" was intended to mean the traditional sales of wool made to large commercial wool buyers.

There were also comments criticizing the limitation of the amount of the sales proceeds which would be eligible for price support payments to four times the national average price ("four times rule") as being unfair. The four times rule was effective for the 1985 and 1986 marketings of mohair and wool. Under the interim rule, the maximum sales price for which price support payments would be made is determined by DASCO at the end of each marketing year based on the national average market price and is an amount which DASCO determines will encourage the continued domestic production of wool at prices fair to both producers and consumers in a manner which would assure a viable domestic mohair and wool industry.

As indicated earlier, the Comptroller General of the United States reviewed the interim rule and concluded that CCC/USDA had authority to limit the amount of the sales price per pound on which price support payments would be made. The Comptroller General stated that since under the Wool Act the Secretary can set the amounts, terms, and conditions of price support operations, he had the authority to establish price support payment limitations to prevent abuses, based on the reasonably appraised prices for wool.

The final rule provides that the effective date will be retroactive to the dates the 1985 amendments were made to the mohair and wool price support regulations: November 14, 1985 and August 23, 1985, respectively. It is necessary that the interim rule be made effective retroactively in order to nullify the unintended effects of the 1985 amendments with respect to the eligibility of certain producers to receive price support payments who would otherwise not be eligible for price support payments. The retroactive application will not affect other producers who were otherwise eligible for price support payments.

List of Subjects**7 CFR Part 1468**

Commodity Credit Corporation, Price Support Program—Mohair, Reporting and recordkeeping requirements.

7 CFR Part 1472

Commodity Credit Corporation, Price Support Program—Wool, Reporting and recordkeeping requirements.

Final Rule

Accordingly, the interim rule published at 52 FR 4275 (February 11, 1987), which amended 7 CFR Parts 1468 and 1472, is hereby adopted as a final rule without change.

Authority: Secs. 4 and 5, 52 Stat. 1070, as amended (15 U.S.C. 714b, 714c); secs. 702-708, 68 Stat. 910-912, as amended (7 U.S.C. 1781-1787).

Signed at Washington, DC, on October 27, 1987.

Vero Neppi,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87-25382 Filed 11-2-87; 8:45 am]

BILLING CODE 3410-05-M

NUCLEAR REGULATORY COMMISSION**10 CFR Part 50**

Evaluation of the Adequacy of Off-Site Emergency Planning for Nuclear Power Plants at the Operating License Review Stage Where State and/or Local Governments Decline To Participate in Off-Site Emergency Planning

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its rules to provide criteria for the evaluation at the operating license review stage of utility-prepared emergency plans in situations in which state and/or local governments decline to participate further in emergency planning. The rule is consistent with the approach adopted by Congress in section 109 of the NRC Authorization Act of 1980, Pub. L. 96-295, described in the Conference Report on that statute (H. 96-1070, June 4, 1980), twice re-enacted by the Congress (in Pub. L. 97-415, Jan. 4, 1983, and Pub. L. 98-553, Oct. 30, 1984), and followed in a prior adjudicatory decision of the Commission, *Long Island Lighting Co.*, (Shoreham Nuclear Power Station, Unit 1), CLI-66-13, 24 NRC 22 (1966). The rule

recognizes that though state and local participation in emergency planning is highly desirable, and indeed is essential for maximum effectiveness of emergency planning and preparedness. Congress did not intend that the absence of such participation should preclude licensing of substantially completed nuclear power plants where there is a utility-prepared emergency plan that provides reasonable assurance of adequate protection to the public.

EFFECTIVE DATE: December 3, 1987.

FOR FURTHER INFORMATION CONTACT:

Peter G. Crane, Office of the General Counsel, USNRC, Washington, DC 20555, 202-634-1465

Michael T. Jamgochian, Office of Nuclear Regulatory Research, USNRC, Washington, DC 20555, 301-443-7657.

David B. Matthews, Office of Nuclear Reactor Regulation, USNRC, Washington, DC 20555, 301-492-0647.

SUPPLEMENTARY INFORMATION:

Discussion

On March 6, 1987, the NRC published its notice of proposed rulemaking in the Federal Register, at 52 FR 6980. The period for public comment (60 days, subsequently extended for an additional 30 days) expired on June 4, 1987.

The proposed rule drew an unprecedentedly large number of comments. Some 11,500 individual letters were sent to NRC, as well as 27,000 individually signed form letters sent to Congress or the White House and forwarded to NRC. Approximately 15,300 persons signed petitions to the NRC. Every comment was read, including form letters, which were examined one by one so that any individual messages added by the signatories could be taken into account. NRC attempted to send cards of acknowledgment to each commenter.

The sheer volume of the comments received makes it clearly impracticable to discuss them individually. As a result, the following discussion will focus on the principal issues raised in the comments.

Issue #1. Is the proposed rule legal? Specifically, is it in accord with the language and legislative history of the emergency planning provisions enacted by the Congress in 1980?

Answer: Yes. The intent of the proposed rule, as clarified in Commission testimony and in other responses to the Congress, is to give effect to the Congress's 1980 compromise approach to emergency planning, not go beyond it. To explain this requires a somewhat detailed discussion of the background of the actions taken in 1980 by Congress and

by the Commission with regard to emergency planning.

The backdrop for the actions taken by the Congress and the Commission in 1980 was, of course, the 1979 accident at Three Mile Island. The accident changed the NRC's regulatory approach to radiological emergency planning. Before the accident, emergency planning received relatively little attention from nuclear regulators. The prevailing assumption was that engineered safety features in nuclear power plants, coupled with sound operation and management, made it unlikely that emergency planning would ever be needed. At that time, only a limited evaluation of offsite emergency planning issues took place in the pre-construction review of applications to build nuclear power plants. The Three Mile Island accident led to the widespread recognition that, while there is no substitute for a well built, well run, and well regulated nuclear power plant, a substantial upgrading of the role of emergency planning was necessary if the public health and safety were to be adequately protected.

The Commission issued an advance notice of proposed rulemaking in July 1979, and in September and December of the same year it issued proposed emergency planning rules 44 FR 54308 (September 19, 1979); 44 FR 75167 (December 19, 1979). Before the Commission took final action on the rules, however, the Congress took action, writing emergency planning provisions into the NRC Authorization Act for fiscal year 1980, Pub. L. No. 96-295. It is extremely important to focus on what the Congress did in that Act, because Congress' actions were the starting point for all the NRC did subsequently in the emergency planning area, as the written record makes clear.

Section 109 of the NRC Authorization Act directed the Commission to establish regulations making the existence of an adequate emergency plan a prerequisite for issuance of an operating license to a nuclear facility. The NRC was further directed to promulgate standards for state radiological response plans.

In the same section of the 1980 Act, Congress specified the conditions under which the Commission could issue operating licenses, and in doing so, it made clear its preferences with regard to state and local participation. Its first preference, reflected in section 109(b)(1)(B)(i)(I), is for a "State or local radiological emergency response plan which provides for responding to any radiological emergency at the facility concerned and which complies with the Commission's standards for such plans."

In section 109(b)(1)(B)(i)(II), however, the Congress set out a second option: "In the absence of a plan which satisfies the requirements of subclause (I), there exists a State, local, or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned." (Emphasis added.) In addition, section 109 provided that the Commission's determination under the first but not the second of the two options could be made "only in consultation with the Director of the Federal Emergency Management Agency and other appropriate agencies." Section 109(b)(1)(B)(ii). The statute further directed the Commission to "establish by rule . . . a mechanism to encourage and assist States to comply as expeditiously as practicable" with the NRC's standards for State radiological emergency response plans. Section 109(b)(1)(C).

The Conference Report on the legislation, H. 96-1070 [June 4, 1980] explained in clear terms, at p. 27, the rationale for the two-tiered approach: "The conferees sought to avoid penalizing an applicant for an operating license if a State or locality does not submit an emergency response plan to the NRC for review or if the submitted plan does not satisfy all the guidelines or rules. In the absence of a State or local plan that complies with the guidelines or rules, the compromise permits NRC to issue an operating license if it determines that a State, local or utility plan, such as the emergency preparedness plan submitted by the applicant, provides reasonable assurance that the public health and safety is not endangered by operation of the facility." (Emphasis added.)

The statute, which was enacted on June 30, 1980, and the Conference Report make abundantly clear that in Congress' view, the ideal situation was one in which there is a state or local plan that meets all NRC standards. It is generally clear that in Congress' view, there could be emergency planning under a utility plan that to some degree fell short of the ideal but was nevertheless adequate to protect the health and safety of the public.

That Congressional judgment was before the Commission when it considered final emergency planning rules only a few weeks later, and the Commission took pains to make clear on the record that it was following the Congress' approach. As the Commission stated in its notice of final rulemaking, published on August 19, 1980, at 45 FR 55402:

Finally, on July 23, 1980, at the final Commission consideration of these rules, the Commission was briefed by the General Counsel on the substance of conversations with Congressional staff members who were involved with the passage of the NRC Authorization Act for fiscal year 1980, Pub. L. No. 96-295. The General Counsel advised the Commission that the NRC final rules were consistent with that Act. The Commission has relied on all of the above information in its consideration of these final rules. In addition, the Commission directs that the transcripts of these meetings shall be part of the administrative record in this rulemaking.

In addition, in a key portion of the rule, dealing with the question of whether NRC should automatically shut down nuclear plants in the absence of an NRC-approved state or local emergency plan, or should instead evaluate all the relevant circumstances before deciding on remedial action, the NRC again explicitly followed the Congress' lead. In determining what action to take, the Commission said, it would look at the significance of deficiencies in emergency planning, the availability of compensating measures, and any compelling reasons arguing in favor of continued operation. 10 CFR 50.47(c). The Commission explained: "This interpretation is consistent with the provisions of the NRC Authorization Act for fiscal year 1980, Pub. L. 96-295," 45 FR 55403. Thus in deciding that the lack of an approved state or local plan should not be grounds for automatic shutdown of a nuclear power plant, the Commission expressly declared itself to be following the statutory approach.

This background sheds considerable light on a passage from the Federal Register notice which some commenters saw as indication that the Commission consciously decided in 1980 that states and localities should have the power to exercise a veto over nuclear power plant operation. The Commission said:

The Commission recognizes that there is a possibility that the operation of some reactors may be affected by this rule through inaction of State and local governments or an inability to comply with these rules. The Commission believes that the potential restriction of plant operation by State and local officials is not significantly different in kind and effect from the means already available to prohibit reactor operation. . . . Relative to applying this rule in actual practice, however, the Commission need not shut down a facility until all factors have been thoroughly examined.

45 FR 55404. (Emphasis added.)

It has been argued that the language just quoted indicates that the Commission made a conscious decision in 1980 to allow states and localities to exercise a veto power over completed nuclear power plants. Seen in context,

however, it is apparent that the Commission did no such thing. Rather, the Commission was acknowledging the fact that under the approach it was taking, the action (or inaction) of a state or locality had the potential to affect the operation of nuclear power plants, since state and local non-participation would clearly make it more difficult for an applicant to demonstrate the adequacy of emergency planning. It is worth emphasizing the word "potential" in the quoted passage. It indicates that the Commission believed that in some cases, state and local action or inaction might have the effect of restricting plant operation, while in other cases it would not. In other words, the Commission foresaw a case-by-case evaluation, with the result not foreordained either in the direction of plant operation or of shutdown. Clearly, neither the Commission nor the Congress envisioned that state or local non-participation should automatically bar plant operation without further inquiry.

The mechanism adopted by the Commission for implementing the two-tiered approach was set forth in 10 CFR 50.47 of the Commission's regulations. For the first tier, sixteen planning standards for a state or local emergency plan were spelled out in 10 CFR 50.47(b)(1-16) of the Commission's regulations. The second tier, by contrast, was dealt with in a brief and unspecific provision, 10 CFR 50.47(c)(1):

Failure to meet the [16] 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.

In a 1986 decision, the Commission declared that in a situation in which state and local authorities decline to participate in emergency planning, the NRC has the authority and the legal obligation to consider a utility plan and render a judgment on the adequacy of emergency planning and preparedness. *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-86-13, 24 NRC 22. The Commission observed in *LILCO* that the emergency planning standards of 10 CFR 50.47(b)—the regulation which establishes the 16 planning standards by which a state and local plan is to be measured—"are premised on a high level of coordination between the utility and State and local governments," so that "[i]t should come as no surprise that without

governmental cooperation [the utility] has encountered great difficulty complying with all of these detailed planning standards." 22 NRC 22, 29. The Commission noted, however, that its emergency planning rules were intended to be "flexible," and that a utility plan will pass muster under 10 CFR 50.47(c) "notwithstanding noncompliance with the NRC's detailed planning standards . . . (1) if the defects are 'not significant'; (2) if there are 'adequate interim compensating actions'; or (3) if there are 'other compelling reasons.'" The Commission added: "The decisions below focus on (1) and (2) and we do likewise."

The Commission then explained that the "measure of significance under (1) and adequacy under (2) is the fundamental emergency planning standard of § 50.47(a) that 'no operating license . . . will be issued unless a finding is made by NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.'" The "root question," the Commission said, was whether a utility plan "can provide for 'adequate protective measures . . . in the event of a radiological emergency.'" To answer that question, the Commission continued, requires recognition of the fact that emergency planning requirements do not have fixed criteria, such as prescribed evacuation times or radiation dose savings, but rather aim at "reasonable and feasible dose reduction under the circumstances." 24 NRC 22, 30.

Thus the Commission is already on record as believing itself legally obligated to consider the adequacy of a utility plan in a situation of state and/or local non-participation in emergency planning. Likewise, it is on record as believing that the evaluation of a utility plan takes place in the context of the overriding obligation that no license can be issued unless the emergency plan is found to provide reasonable assurance of adequate protective measures in an emergency. The Commission believes that the planning standards of 10 CFR 50.47(b), which are used to evaluate a state or local plan, also provide an appropriate framework to evaluate a utility plan. Therefore, the new rule provides for the first time that where a utility plan is submitted, in a situation of state and/or local non-participation in emergency planning, it will be evaluated for adequacy against the same standards used to evaluate a state or local plan. However, due allowance will be made both for the non-participation of the state and/or local governmental authorities and for the compensatory

measures proposed by the utility in reaching a determination whether there is "reasonable assurance that adequate protective measures can and will be taken."

To sum up, therefore, the rule is in accord with legal requirements for emergency planning at nuclear power plants because:

- The rule is consistent with section 109 of the NRC Authorization Act of 1980, a measure which has twice reenacted by the Congress, though it has since expired. In addition, the House of Representatives recently rejected an amendment designed to bar implementation of the rule for two specific plants.
- The rule is consistent with existing NRC regulations, and is well within NRC's rulemaking authority.
- Since the rule provides for no diminution of public protection from what was provided under existing regulations, it cannot be in contravention of any statutory requirements governing the level of NRC safety standards.

Issue #2: Is this a generic rule, or is this proposal really aimed at the Shoreham and Seabrook plants?

The rule is generic in the sense that it is of general applicability and future effect, covering future plants as well as existing plants. At present, however, there are only two plants with pending operating license applications for which state and/or local non-participation is an issue. Those plants are Shoreham and Seabrook. The NRC's 1980 rules, perhaps because of optimism that states and localities would always choose to be partners in emergency planning, included only a general provision, 10 CFR 50.47(c), dealing with cases in which utilities are unable to satisfy the standards for state and local emergency plans, and had no specific discussion of the evaluation of a utility plan in cases of state or local non-participation. This does not mean that the NRC was compelled to adopt new regulations in order to act on the Shoreham and Seabrook license applications. On the contrary, the NRC has always had the option of proceeding by case-by-case adjudication under its 1980 regulations.

Issue #3: Will this rule assure licenses to the Shoreham and Seabrook plants?

It will not assure a license to any particular plant or plants. It will establish a framework in which a utility seeking an operating license can, in a case of state and/or local non-participation, attempt to demonstrate to the NRC that emergency planning is adequate. Whether a utility could succeed in making that showing would

depend on the record developed in a specific adjudication, the results of which would be subject to multiple levels of review within the Commission as well as to review in the courts.

Issue #4: Is state or local participation essential for the NRC to determine that there will be adequate protection of the public health and safety?

We do not have a basis at this time for determining generically whether state and local participation in emergency planning is essential for NRC to determine that there will be adequate protection of the public health and safety. There has yet to be a final adjudicatory determination in any proceeding on the adequacy of a utility plan where state and local governmental authorities decline to participate in emergency planning. Clearly, it will be more difficult for a utility to satisfy the NRC of the adequacy of its plan in the absence of state and local participation, but whether it would be impossible remains to be seen. The fact that Congress provided for evaluation of a utility plan in section 109 of the NRC Authorization Act of 1980 (and in two subsequent Authorization Acts) indicates that Congress believed that it was at least possible in some cases for a utility plan to be found to provide "reasonable assurance that public health and safety is not endangered by operation of the facility concerned," in the words of the "second tier" provided in section 109.

Issue #5: Is emergency planning as important to safety as proper plant design and operation?

First of all, this issue does not have to be addressed in the context of the final rule announced in this notice, since the present rule involves no redrawing by NRC of the balance between emergency planning and other provisions for the protection of health and safety. Having said that, we turn to the question of the place of emergency planning in the overall regulatory scheme for the protection of public health and safety.

Though the Commission in its 1980 rulemaking explicitly described emergency planning as "essential," it is less clear what importance the Commission assigned to emergency planning, as compared to the importance accorded to other means of protecting public health and safety, notably sound siting, design, and operation. In the Supplementary Information explaining the 1980 rulemaking, the Commission stated that "adequate emergency preparedness is an essential aspect in the protection of the public health and safety," 55 FR 55404, and commented 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." (Emphasis added.) 45 FR 55403. The Commission also explained that in light of the Three Mile Island accident it had become "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." *Id.* Though the word "bolstered" suggests that the Commission of 1980 viewed emergency planning as a backstop for other means of public protection rather than as of equal importance to them, the issue cannot be resolved definitively by microscopic analysis of the particular words chosen in 1980.

More relevant to the task of ascertaining the intent of the 1980 rulemaking is the regulatory structure established under the 1980 rules. In 10 CFR 50.54(s)(2)(ii), the Commission provided that if it "finds that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency * * * and if the deficiencies * * * are not corrected within four months of that finding, the Commission will determine whether the reactor shall be shut down until such deficiencies are remedied or whether other enforcement action is appropriate." In other words, a plant ordinarily may operate for at least four months with deficiencies in emergency planning before the NRC is required even to decide whether remedial action should be taken. This approach, the Commission said in the Supplementary Information to the 1980 rule, was consistent with section 109 of the NRC Authorization Act of 1980, 45 FR 55407. At the time that the Commission created the so-called "120-day clock" for deficiencies in emergency planning, it was settled Commission law (and remains so today) that the NRC must issue an order directing a licensee to show cause why its license should not be modified, revoked or suspended whenever it concludes that "substantial health or safety issues ha[ve] been raised" about the activities authorized by the license. *Consolidated Edison Company of New York* (Indian Point, Units No. 1, 2 and 3), CLI-75-8, 2 NRC 173, 176. That standard was endorsed by the Court of Appeals for the District of Columbia Circuit in *Porter County Chapter of the Isaac Walton League v. NRC*, 606 F.2d 1363 (1978). In the context of that standard, the 120-day clock provision for emergency planning deficiencies amounts to a Commission

finding that, at least for the first 120 days, even a major deficiency in emergency planning does not automatically raise a "substantial health or safety issue" with regard to plant operation. By contrast, a major safety deficiency relating to emergency conditions—for example, the availability of the emergency core cooling system—would warrant immediate shutdown.

In sum, despite language indicating that emergency planning was "essential," the Commission in 1980 created a regulatory structure in which emergency planning was treated somewhat differently, in terms of the corrective actions to be taken when deficiencies are identified, from the engineered safety features ("hardware") that would be relied on in an emergency.

Issue #6: Assuming that NRC should consider a utility plan, what criteria should apply? In particular:

(a) Should the utility plan provide just as much protection as a state or local plan, or may less protection be adequate?

(b) If less protection may be adequate, must NRC still find reasonable assurance that under the utility plan, adequate protective measures can and will be taken? Or is it sufficient for NRC to find that the totality of the risk, including all relevant factors, including the likelihood of an accident, assures that there is adequate protection of public health and safety?

Under the rule adopted in this notice, a utility plan, to pass muster, is required to provide reasonable assurance that adequate protective measures can and will be taken in an emergency. The rule recognizes—as did Congress when it enacted and re-enacted the provisions of Section 109 of the NRC Authorization Act of 1980—that no utility plan is likely to be able to provide the same degree of public protection that would obtain under ideal conditions, i.e. a state or local plan with full state and local participation, but that it *may* nevertheless be adequate. The rule starts from the premise that accidents can happen, and that at every plant, adequate emergency planning measures are needed to protect the public in the event an accident occurs. Whether in fact a particular utility plan will be found adequate would be a matter for adjudication in individual licensing proceedings.

Issue #7: May NRC assume that a state or local government which refuses to cooperate in emergency planning will still respond to the best of its ability in an actual emergency? If so:

(a) May NRC assume that the state or local response will be in accord with the utility plan?

(b) May NRC assume that the state or local response will be adequate?

(c) If the NRC rule calls for reliance on FEMA, and FEMA says that it can't judge emergency planning except when there is state and local participation in an exercise, how can the NRC ever make a judgment on emergency planning in a situation in which state and local authorities do not participate?

In this rule, the Commission adheres to the "realism doctrine," enunciated in its 1986 decision in *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-86-13, 24 NRC 22, which holds that in an actual emergency, state and local governmental authorities will act to protect their citizenry, and that it is appropriate for the NRC to take account of that self-evident fact in evaluating the adequacy of a utility's emergency plan. The NRC's realism doctrine is grounded squarely in common sense. As the Commission stated in *LILCO*, even where state and local officials "deny they ever would or could cooperate with [a utility] either before or even during an accident," the NRC "simply cannot accept these statements at face value." 24 NRC 22, 29 fn. 9. It would be irrational for anyone to suppose that in a real radiological emergency, state and local public officials would refuse to do what they have always done in the event of emergencies of all kinds: do their best to help protect the affected public.

The *Long Island Lighting Co.* decision included the observation that in an accident, the "best effort" of state and county officials would include utilizing the utility's plan as "the best source for emergency planning information and options." 24 NRC 22, 31. This rule leaves it to the Licensing Board to judge what form the "best efforts" of state and local officials would take. However, the rulemaking record strongly supports the proposition that state and local governments believe that a planned response is preferable to an ad hoc one. Therefore it is only reasonable to suppose that in the event of a radiological emergency, state and local officials, in the absence of a state or local radiological emergency plan approved by state and local governments, will either look to the utility and its plan for guidance or will follow some other plan that exists. Thus the presiding Licensing Board may presume that state and local governmental authorities will look to the utility for guidance and generally follow its plan in an actual emergency; however, this presumption may be

rebutted by, for example, a good faith and a timely proffer of an adequate and feasible state or local radiological response plan which would in fact be relied upon in an emergency. The presiding Licensing Board should not hesitate to reject any claim that state and local officials will refuse to act to safeguard the health and safety of the public in the event of an actual emergency. In actual emergencies, state, local, and federal officials have invariably done their utmost to protect the citizenry, as two hundred years of American history amply demonstrates.

At the present time, the Commission does not have a basis in its adjudicatory experience to judge either that a utility plan would be adequate in every case or that it would be inadequate in every case. Implementation of this rule may ultimately provide that informational basis.

The problem of how the NRC can decide the adequacy of emergency planning in the face of FEMA's declared reluctance to make judgments on emergency planning in cases of state and local non-participation does not appear insoluble. Though FEMA has expressed its reluctance to make judgments in such circumstances, because of the degree of conjecture that would in FEMA's view be called for, we do not interpret its position as one of refusal to apply its expertise to the evaluation of a utility plan. For FEMA to engage in the evaluation of a utility plan would necessitate no retreat from its stated view that it is highly desirable to have, for each nuclear power plant, a state or local plan with full state and local participation in emergency planning, including emergency exercises. (The Commission shares that view.) FEMA's advice would undoubtedly include identification of areas in which judgments are necessarily conjectural, and NRC's overall judgment on whether a utility's plan is adequate would in turn have to take account of the uncertainties included in FEMA's judgment. Beyond a certain point, uncertainty as to underlying facts would plainly make a positive finding on "reasonable assurance" increasingly difficult. These are issues, however, which can be addressed in the case-by-case adjudications on individual fact-specific situations. It should be noted that while the rule makes clear that ultimate decisional authority resides with NRC, it does envision a role for FEMA in the evaluation of utility plans, although section 109 of the NRC Authorization Act of 1980 did not specify any role for

FEMA in the evaluation of utility plans (as opposed to state and local plans).

Issue #8: If this is a national policy question, why doesn't the Commission leave the issue to the Congress to resolve?

Congress did address, in 1980, the issue of what should be done in the event there is no acceptable state or local emergency plan: it directed the NRC to evaluate a state, local, or utility plan to determine whether it provided "reasonable assurance that public health and safety is not endangered by operation of the facility concerned." Perhaps because it was overly optimistic that there would be an acceptable state or local plan in every case, the Commission did not, except in general terms (at 10 CFR 50.47(c)), provide in its regulations for the evaluation of a utility plan. The present rule is an effort to make up for that omission by incorporating provisions implementing the Congress's 1980 policy decision into the NRC's rules. As noted elsewhere, the 1980 statute, twice re-enacted, has expired, but the NRC does not need the specific authority of that statute to adopt this rule, which is promulgated pursuant to the NRC's general authority, under section 161(b) and other provisions of the Atomic Energy Act, to regulate the use of nuclear energy.

The House of Representatives, as has been described above, voted 261-160 on August 5, 1987 to reject an amendment which would have barred the application of this rule to two specific plants. The Congress is thus well aware of the Commission's emergency planning rulemaking.

For the Commission to terminate its rulemaking and ask the Congress to address the policy issues involved thus seems unwarranted at this time. The Commission is still well within the framework of the guidance which the Congress gave it in 1980 (and in the two re-enactments of the statute) and also well within its rulemaking authority. It has yet to carry through that guidance to the point of making an adjudicatory decision on the adequacy of a utility plan. If and when the Commission determines, through adjudications in individual cases, that there is a continuing problem which only Congressional action can solve, it can so notify the Congress, but that point has not yet been reached.

Issue #9: Doesn't the proposed rule still leave open the possibility that state or local action or inaction can have the effect of blocking operation of a plant? If so, how can the proposed rule be said to effectuate the Congressional intent that licensees not be penalized for the

inaction or inadequate action of state and local authorities?

Yes, the proposed rule does leave open the possibility that state or local non-participation can indirectly block the operation of a nuclear plant. This is so because under the particular facts of an individual case it may be impossible for the NRC to conclude that a utility plan is adequate, as defined in this rule. That does not mean, however, that the Congress's intent, as expressed in the 1980 statute and its re-enactments, is thereby frustrated. The Congress was concerned that utilities not be "penalized," but not to the extent that it was willing to countenance operation of a nuclear power plant in a situation where the public was not adequately protected. Congress intended to give a utility the opportunity to demonstrate that its plan provided "reasonable assurance," but it also provided that the NRC could not permit a plant to operate unless it found that the utility had met that burden.

Issue #10: Will the proposed rule discourage cooperation between licensees and state and local governments in emergency planning?

There is no reason to believe that the rule would discourage cooperation between licensees and state and local governments in emergency planning. Realistically, the only way in which the rule could discourage such cooperation would be if utilities were to decide that because of the new rule, they had less of an incentive to be accommodating to the needs and desires of state and local authorities. That might be a possible result if it appeared that the new rule made it easy and fast for a utility to obtain approval for its plan in cases of state and local non-participation.

In reality, it is likely to be much more difficult and time-consuming for a utility to obtain approval of its plan in the face of state and local opposition. The problems highlighted by this rulemaking are likely, if anything, to impress utilities anew with the desirability of doing everything necessary to obtain and retain full state and local participation in emergency planning.

Issue #11: Is the proposed rule based on an NRC consideration of economic costs?

The NRC rule is an effort to bring the NRC's regulations more clearly into line with a policy decision made by the Congress in 1980. The NRC's rule is thus based on economic considerations only to the extent that the Congress's policy decision of 1980 was based on economic considerations. In the Conference Report on the NRC Authorization Act of 1980 (H.96-1070, June 4, 1980), the conferees stated that they did not wish

utilities to be "penalized" in situations in which there was no acceptable state or local plan. That could be taken as a reference to economic costs or simply to considerations of fairness, in that the issue was whether a utility was to be barred from operating a plant by the actions of third parties over which it had no control.

The NRC's motivation in promulgating this rule is not economic. Its motivation is to assure that the NRC is in a position to make the decisions that Congress intended that it make, and that the Commission has declared that it would make.

Issue #12: Is the proposed rule intended to read states and localities out of the emergency planning process?

Emphatically no. The rule leaves the existing regulatory structure unchanged for cases in which state and local authorities elect to participate in emergency planning. The NRC, in common with the Congress and FEMA, regards full state and local participation in emergency planning to be necessary for optimal emergency planning. The rule change is directed to the question of what the NRC's regulatory approach should be in which states and localities decide to take *themselves* out of the emergency planning process. Ideally, in the NRC's view, the new rule would never have to be used, because states and localities would never refuse to participate in emergency planning.

Issue #13: Does the proposed rule alter the place of emergency planning in the overall safety finding that the Commission must make?

It does not. As described above, the Commission must make both a finding of "adequate protective measures . . . in an emergency" and an overall safety finding of "reasonable assurance that the health and safety of the public will not be endangered" (10 CFR 50.35(c), implementing section 182 of the Atomic Energy Act, 42 U.S.C. 2232). The rule does nothing to alter either the requirement that emergency planning must be found adequate or the place of emergency planning in the overall safety finding.

Issue #14: What effect if any does the proposed rule have on nuclear plants that are already in operation?

The rule does not specifically apply to plants that already have operating licenses. As described above, 10 CFR 50.54(s)(2)(ii) of the Commission's regulations already provides a mechanism (the "120-day clock") for addressing situations in which deficiencies are identified in emergency planning at operating plants. To the extent that this rule provides criteria by

which a utility plan would be judged by state and local withdrawal from participation in emergency planning, those criteria would presumably be of assistance to decisionmakers in determining, under 10 CFR 50.54(s)(2)(ii), whether remedial action should be taken, and if so, what kind, where deficiencies in emergency planning remain uncorrected after 120 days.

Issue #13: Does the Commission's rule mean that the NRC does not have to find that a utility plan would offer protection equivalent to what a plan with full state and local participation would provide?

As stated previously, under the rule adopted in this notice, a utility plan, to pass muster, is required to provide reasonable assurance that adequate protective measures can and will be taken in emergency. The rule recognizes—as did Congress when it enacted and re-enacted the provisions of Section 109 of the NRC Authorization Act of 1980—that no utility plan is likely to be able to provide the same degree of public protection that would obtain under ideal conditions, i.e. a state or local plan with full state and local participation, but that it may nevertheless be adequate.

The Commission's rule, as modified and clarified, would establish a process by which a utility plan can be evaluated against the same standards that are used to evaluate a state or local plan (with allowances made both for those areas in which compliance is infeasible because of governmental non-participation and for the compensatory measures proposed by the utility). It must be recognized that emergency planning rules are necessarily flexible. Other than "adequacy," there is no uniform "passing grade" for emergency plans, whether they are prepared by a state, a locality, or a utility. Rather, there is a case-by-case evaluation of whether the plan meets the standard of "adequate protective measures . . . in the event of an emergency." Likewise, the acceptability of a plan for one plant is not measured against plans for other nuclear plants. The Commission, in its 1986 *LILCO* decision, stressed the need for flexibility in the evaluation of emergency plans. In that decision, the Commission observed that it "might look favorably" on a utility plan "if there was reasonable assurance that it was capable of achieving dose reductions in the event of an accident that are generally comparable to what might be accomplished with government cooperation." 24 NRC 22, 30. We do not read that decision as requiring a finding of the precise dose reductions that would be accomplished either by the

utility's plan or by a hypothetical plan that had full state and local participation; such findings are never a requirement in the evaluation of emergency plans. The final rule makes clear that every emergency plan is to be evaluated for adequacy on its own merits, without reference to the specific dose reductions which might be accomplished under the plan or to the capabilities of any other plan. It further makes clear that a finding of adequacy for any plan is to be considered generally comparable to a finding of adequacy for any other plan.

The rule change is designed to establish procedures and criteria governing the case-by-case adjudicatory evaluation, at the operating license review stage, of the adequacy of emergency planning in situations in which state and/or local authorities decline to participate further in emergency planning. It is not intended to assure the licensing of any particular plant or plants. The rule is intended to remedy the omission of specific procedures for the evaluation of a utility plan from the NRC's existing rules, adopted in 1980. In providing for the evaluation of a utility plan, however, the rule represents no departure from the approach envisioned in 1980 by the Congress and by the Commission. In 1980, the supplementary information to NRC's final rule stated that the rule was consistent with the approach taken by Congress in Section 109 of the NRC Authorization Act of 1980 (which, in a compromise between House and Senate versions, provided for the NRC to evaluate a utility's emergency plan in situations where a state or local plan was either nonexistent or inadequate), though the rule itself included no explicit provisions governing the NRC's evaluation of a utility plan in such circumstances. It should be emphasized that the rule is not intended to diminish public protection from the levels previously established by the Congress or the Commission's rules, since the Commission's rules and the Congress have since 1980 provided for a two-tier approach to emergency planning. The rule takes as its starting point the Congressional policy decision reflected in section 109 of the NRC Authorization Act of 1980. That statute adopted a two-tier approach to emergency planning. The preferred approach was for operating licenses to be issued upon a finding that there is a "State or local radiological emergency response plan . . . which complies with the Commission's standards for such plans," but failing that, it also permitted licensing on a showing that there is a

"State, local, or utility plan which provides reasonable assurance that the public health and safety is not endangered by operation of the facility concerned."

Under the Commission's 1980 rules, the regulatory provision that implemented the second of the two tiers of Section 109 was general and unspecific. The relevant regulation, 10 CFR 50.47(c), allowed a nuclear power plant to be licensed to operate, notwithstanding its failure to comply with the planning standard of 10 CFR 50.47(b), on a showing that "deficiencies in the plans are not significant for the plant in question, that adequate interim compensating measures have been or will be taken promptly, or that there are other compelling reasons to permit plant operation," without defining those terms further. The Commission currently believes that the planning standards of 10 CFR 50.47(b), which are used to evaluate a state or local plan, also provide an appropriate framework to evaluate a utility plan. Therefore, the new rule provides for the first time that where a utility plan is submitted, in a situation of state and/or local non-participation in emergency planning, it will be evaluated for adequacy against the same standards used to evaluate a state or local plan. However, due allowance will be made both for the non-participation of the state and/or local governmental authorities and for the compensatory measures proposed by the utility in reaching a determination whether there is "reasonable assurance that adequate protective measures" can and will be taken.

The approach reflected in this rule amplifies and clarifies the guidance provided in the Commission's decision in *Long Island Lighting Co.*, (Shoreham Nuclear Power Station, Unit 1), CLJ-86-13, 24 NRC 22 (1986). The rule incorporates the "realism doctrine," set forth in that decision, which holds that in an actual emergency, state and local governmental authorities will act to protect the public, and that it is appropriate therefore for the NRC, in evaluating the adequacy of a utility's emergency plan, to take into account the probable response of state and local authorities, to be determined on a case-by-case basis.

That decision also included language which could be interpreted as envisioning that the NRC must estimate the radiological dose reductions which a utility plan would achieve, compare them with the radiological dose reductions which would be achieved if there were a state or local plan with full

state and local participation in emergency planning, and permit licensing only if the dose reductions are "generally comparable." Such an interpretation would be contrary to NRC practice, under which emergency plans are evaluated for adequacy without reference to numerical dose reductions which might be accomplished, and without comparing them to other emergency plans, real or hypothetical. The final rule makes clear that every emergency plan is to be evaluated for adequacy on its own merits, without reference to the specific dose reductions which might be accomplished under the plan or to the capabilities of any other plan. It further makes clear that a finding of adequacy for any plan is to be considered generally comparable to a finding of adequacy for any other plan.

The *Long Island Lighting Co.* decision included the observation that in an accident, the "best effort" of state and county officials would include utilizing the utility's plan as "the best source for emergency planning information and options." 24 NRC 22, 31. This rule leaves it to the Licensing Board to judge what form the "best efforts" of state and local officials would take, but that judgment would be made in accordance with certain guidelines set forth in the rule and explained further below. The rulemaking record strongly supports the proposition that state and local governments believe that a planned response is preferable to an ad hoc one. Therefore it is only reasonable to suppose that in the event of a radiological emergency, state and local officials, in the absence of a state or local radiological emergency plan approved by state and local governments, will either look to the utility and its plan for guidance or will follow some other plan that exists. Thus, the presiding Licensing Board may presume that state and local governmental authorities will look to the utility for guidance and generally follow its plan in an actual emergency; however, this presumption may be rebutted by, for example, a good faith and timely proffer or an adequate and feasible state or local radiological response plan which would in fact be relied upon in an emergency. The presiding Licensing Board should not hesitate to reject any claim that state and local officials will refuse to act to safeguard the health and safety of the public in the event of an actual emergency. In actual emergencies, state, local, and federal officials have invariably done their utmost to protect the citizenry, as two hundred years of American history amply demonstrates.

The rule thus establishes the framework by which the adequacy of emergency planning, in cases of state and/or local non-participation, can be evaluated on a case-by-case basis in operating license proceedings. The rule does not presuppose, nor does it dictate, what the outcome of that case-by-case evaluation will be. As with other issues adjudicated in NRC proceedings, the outcome of case-by-case evaluations of the adequacy of emergency planning using a utility's plan will be subject to multiple layers of administrative review within the Commission and to judicial review in the courts.

Backfit Analysis

This amendment does not impose any new requirements on production or utilization facilities; it only provides an alternative method to meet the Commission's emergency planning regulations. The amendment therefore is not a backfit under 10 CFR 50.109 and a backfit analysis is not required.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. The proposed rule applies only to nuclear power plant licensees which are electric utility companies dominant in their service areas. These licensees are not "small entities" as set forth in the Regulatory Flexibility Act and do not meet the small business size standards set forth in Small Business Administration regulations in 13 CFR Part 121.

Paperwork Reduction Act

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval No. 3150-0011.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and Recordkeeping requirements.

Environmental Assessment and Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a

major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The Commission has prepared, in support of this finding, an environmental assessment which is available for inspection and copying, for a fee, at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this regulation. This analysis further examines the costs and benefits of the proposed action and the alternatives considered by the Commission. The analysis is available for inspection and copying, for a fee, at the NRC Public Document Room, 1717 H Street, N.W., Washington, DC.

For the reasons set out in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the Commission is adopting the following amendments to 10 CFR Part 50:

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 162, 163, 166, 169, 68 Stat. 936, 937, 148, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 68 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5651), Sections 50.57(d), 50.58, 50.91 and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2071, 2073 (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 also 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), secs. 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); secs. 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and secs. 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 50.47 [Amended]

2. In 10 CFR Part 50, paragraph (c)(1) of § 50.47 is revised to read as follows:

(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 operations. Where an applicant for an operating license asserts that its inability to demonstrate compliance with the requirements of paragraph (b) of this section results wholly or substantially from the decision of state and/or local governments not to participate further in emergency planning, an operating license may be issued if the applicant demonstrates to the Commission's satisfaction that:

(i) The applicant's inability to comply with the requirements of paragraph (b) of this section is wholly or substantially the result of the non-participation of state and/or local governments.

(ii) The applicant has made a sustained, good faith effort to secure and retain the participation of the pertinent state and/or local governmental authorities, including the furnishing of copies of its emergency plan.

(iii) The applicant's emergency plan provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned. To make that finding, the applicant must demonstrate that, as outlined below, adequate protective measures can and will be taken in the event of an emergency. A utility plan will be evaluated against the same planning standards applicable to a state or local plan, as listed in paragraph (b) of this section, with due allowance made both for—

(A) Those elements for which state and/or local non-participation makes compliance infeasible and

(B) The utility's measures designed to compensate for any deficiencies resulting from state and/or local non-participation.

In making its determination on the adequacy of a utility plan, the NRC will recognize the reality that in an actual emergency, state and local government officials will exercise their best efforts to protect the health and safety of the public. The NRC will determine the adequacy of that expected response, in combination with the utility's compensating measures, on a case-by-case basis, subject to the following guidance. In addressing the circumstance where applicant's inability to comply with the requirements of paragraph (b) of this section is wholly or

substantially the result of non-participation of state and/or local governments, it may be presumed that in the event of an actual radiological emergency state and local officials would generally follow the utility plan. However, this presumption may be rebutted, for example, a good faith and timely proffer of an adequate and feasible state and/or local radiological emergency plan that would in fact be relied upon in a radiological emergency.

Appendix E—[Amended]

3. In 10 CFR Part 50, Appendix E, a new paragraph 6 is added to section IV.F to read as follows:

6. The participation of state and local governments in an emergency exercise is not required to the extent that the applicant has identified those governments as refusing to participate further in emergency planning activities, pursuant to 10 CFR 50.47(c)(1). In such cases, an exercise shall be held with the applicant or licensee and such governmental entities as elect to participate in the emergency planning process.

Dated at Washington, DC, this 29th day of October, 1987.

For the Nuclear Regulatory Commission,

Samuel J. Chilk,

Secretary of the Commission.

[Editorial note: The following regulatory analysis and environmental assessment will not appear in the Code of Federal Regulations]

Regulatory Analysis—Evaluation of the Adequacy of Offsite Emergency Planning for Nuclear Power Plants at the Operating License Review Stage Where State and/or Local Governments Decline to Participate in Offsite Emergency Planning

Statement of the Problem

In 1980, Congress enacted provisions dealing with emergency planning for nuclear power plants in the NRC Authorization Act for fiscal year 1980. Section 109 of that Act provided for the NRC to review a utility's emergency plan in situations in which a state or local emergency plan either did not exist or was inadequate. The NRC published regulations later than year that were designed to be consistent with the Congressionally mandated approach, but they did not include specific mention of utility plans. The absence of such a provision has led to uncertainty about the NRC's authority to consider a utility plan and the criteria by which such a plan would be judged. The present rulemaking is designed to clarify both the NRC's obligation to consider a utility plan at the operating license stage in cases of state and/or local non-participation in emergency planning and the standards against which such a plan would be evaluated.

Objective

The objective of the proposed amendments are to implement the policy underlying the 1980 Authorization Act and to resolve, for future licensing, what offsite emergency

planning criteria should apply where state or local governments decide not to participate in offsite emergency planning or preparedness.

Alternatives

Five alternatives were considered, including leaving the existing rules unchanged. The pros and cons of these alternatives are discussed in the rule preamble published in the Federal Register.

Consequences

NRC

The amendments will probably not impact on NRC resources currently being used in licensing cases because current NRC policy, developed in the adjudicatory case law, is to evaluate utility plans as possible interim compensating actions under 10 CFR 50.47(c)(1). Thus, while there could be extensive litigation and review regarding whether the rule's criteria are met, this would likely be similar to the review and litigation under current practice.

Other Government Agencies

No impact on other agency resources should result with the possible exception that FEMA will need to devote resources to develop criteria for review of utility plans and/or to review the plans on a case-by-case basis.

Industry

Impacts on the industry are speculative because there is no way to predict, in advance of their actual application, whether any particular utility plan will satisfy the rule. However, industry should generally benefit from knowing that rules are in place so that plans for compliance can be formulated.

Public

Under the rule being adopted a utility plan, to pass muster, is required to provide reasonable assurance that adequate protective measures can and will be taken in an emergency. The rule recognizes—as did Congress when it enacted and re-enacted the provisions of Section 109 of the NRC Authorization Act of 1980—that while no utility plan is likely to be able to provide precisely the same degree of public protection that would obtain under ideal conditions, i.e. a state or local plan with full state and local participation, such a plan may nevertheless be adequate. The rule starts from the premise that accidents can happen, and that at every plant, adequate emergency planning measures are needed to protect the public in the event an accident occurs. Whether in fact a particular utility plan will be found adequate would be a matter for adjudication in individual licensing proceedings.

Impact on Other Requirements

The proposed amendments would not affect other NRC requirements.

Constraints

No constraints have been identified that affect implementation of the proposed amendments.

Decision Rationale

The decision rationale is set forth in detail in the preamble to the rule change published in the Federal Register.

Implementation

The rule should become effective 30 days after publication in the Federal Register. Implementation will involve cooperation with FEMA and the development of FEMA/NRC criteria for review of utility plans may be required before the rule is applied to specific cases.

Environmental Assessment for Amendments to Emergency Planning Regulations Dealing With Evaluation of Offsite Emergency Planning for Nuclear Power Plants at the Operating License Review Stage Where State and/or Local Governments Decline to Participate in Offsite Emergency Planning

Identification of the Action

The Commission is amending its regulations to provide criteria for the evaluation at the operating license stage of offsite emergency planning where, because of the non-participation of state and/or local governmental authorities, a utility has proposed its own emergency plan.

The Need for the Action

As described in the Federal Register notice accompanying the final rule, the Commission's emergency planning regulations, promulgated in 1980, did not explicitly discuss the evaluation of a utility emergency plan, although Congress expressly provided that in the absence of a state or local emergency plan, or in cases where a state or local plan was inadequate, the NRC should consider a utility plan. That omission has led to uncertainty as to whether the NRC is empowered to consider a utility plan in cases of state and/or local non-participation, as well as about what the standards for the evaluation of such a plan would be.

Alternatives Considered

The Commission published a proposed rule change on March 6, 1987, at 52 FR 6980. In deciding on a final rule, the Commission considered four options in addition to the one reflected in the final rule. These were: issuance of the rule as originally proposed and described; issuance of a rule making clear that in cases of state and/or local non-participation, licenses could be issued on the basis of the utility's best efforts; issuance of a rule barring the issuance of licenses in cases of state and/or local non-participation; and termination of the rulemaking without the issuance of any rule change.

Environmental Impacts of the Action

The rule does not alter in any way the requirement that for an operating license to be issued, emergency planning for the plant in question must be adequate. The rule is designed to effectuate the second track of the two-track approach adopted by the Congress in the NRC Authorization Act of 1980 and two successive authorization acts, as described in detail in the Federal Register notice. The rule does not affect the place of emergency planning in the overall safety finding which the Commission must make

prior to the licensing of any plant. Accordingly, the rule change does not diminish public protection and has no environmental impact.

Agencies and Persons Consulted

A summary of the very numerous comments appears as part of the Federal Register notice. Shortly before presenting an options paper to the Commission, NRC representatives briefed representatives of the Federal Emergency Management Agency on the contents of the options paper.

Finding of No Significant Impact

Based on the above, the Commission has decided not to prepare an environmental impact statement for the rule changes.

[FR Doc. 87-25439 Filed 11-2-87; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM**12 CFR Part 208**

[Regulation H; Docket No. R-0615]

Agricultural Loan Loss Amortization

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule with request for comments.

SUMMARY: This regulation implements Title VIII of the Competitive Equality Banking Act of 1987 ("CEBA") which permits state member agricultural banks to amortize losses on qualified agricultural loans. The regulation describes the procedures and standards applicable to state member banks desiring to amortize losses under that statute. It also describes the manner in which such amortizations are to be done. Title VIII of CEBA requires regulations implementing Title VIII to be issued not less than 90 days after enactment, that is, by November 3, 1987. Therefore, the Board is publishing this rule as a final rule effective November 9, 1987, for the Call Report for December 31, 1987, but is allowing interested parties to comment through December 3, 1987. Should changes be indicated by the comments, the Board will endeavor to adopt them shortly after the close of the comment period but before the Call Report for December 31, 1987, is filed. Banks wishing to amortize losses may file an application any time after publication of the rule.

DATES: The rule will be effective November 9, 1987, and the first Call Report affected will be the Call Report for December 31, 1987. Comments must be received on or before December 3, 1987.

ADDRESSES: All comments should refer to Docket No. R-0615 and should be mailed to William W. Wiles, Secretary,

Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to Room B-2223, 20th Street and Constitution Avenue NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Roger H. Pugh, Manager (202) 728-5883, Stanley B. Rediger, Senior Financial Analyst (202) 452-2629, Division of Banking Supervision and Regulation (202) 728-5883; Helen Lewis (202) 452-3490, Economist, Financial Reports Section, Division of Research and Statistics; or John Harry Jorgenson, Senior Attorney (202) 452-3778, Legal Division; Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired ONLY, Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson, (202) 452-3544.

SUPPLEMENTARY INFORMATION: Title VIII of the Competitive Equality Banking Act of 1987 ("CEBA") permits agricultural banks to amortize: (1) Losses on qualified agricultural loans shown on its annual financial statement for any year between December 31, 1983 and January 1, 1992; and (2) losses suffered as the result of an appraisal of other assets (related to a qualified agricultural loan) that it owned on January 1, 1983, or acquires prior to January 1, 1992. Title VIII of CEBA also requires that the federal banking agencies issue implementing regulations no later than 90 days after the effective date of the Act (that is, no later than November 9, 1987). This regulation is intended to comply with this requirement. The other federal banking agencies (the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation ("FDIC")) are proposing substantially identical regulations containing only technical variations necessary to accommodate their own regulatory and organizational systems. The standards to be applied are unchanged.

Statutory Requirements for Loan Loss Amortization

Title VIII of CEBA includes the following elements: (1) To be eligible to amortize losses, a bank must meet the following requirements:

(a) Its deposits must be insured by the FDIC;

(b) It must be located in an area the economy of which is dependent upon agriculture;

(c) It must have assets of \$100 million or less;

Document 9:

10 CFR § 50.47 (after 1987 Amendment)

[§ 7434a]

Sec. 50.47. Emergency plans.—(a)(1) Except as provided in paragraph (d) of this section, no operating license for a nuclear power reactor will be issued unless a finding is made by NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

(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 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 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.

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

(1) Primary responsibilities for emergency response by the nuclear facility licensee and by State and local organizations within the Emergency Planning Zones have been assigned, the emergency responsibilities of the various supporting organizations have been specifically established, and each principal response organization has staff to respond and to augment its initial response on a continuous basis.

(2) On-shift facility licensee responsibilities for emergency response are unambiguously defined, adequate staffing to provide initial facility accident response in key functional areas is maintained at all times, timely augmentation of response capabilities is available and the interfaces among various onsite response activities and offsite support and response activities are specified.

(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.

(4) A standard emergency classification and action level scheme, the bases of which include facility system and effluent parameters, is in use by the nuclear facility licensee, and State and local response plans call for reliance on information provided by facility licensees for determinations of minimum initial offsite response measures.

(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.

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

(7) Information is made available to the public on a periodic basis on how they will be notified and what their initial actions should be in an emer-

[The next page is 8681-3.]

gency (e. g., listening to a local broadcast station and remaining indoors), the principal points of contact with the news media for dissemination of information during an emergency (including the physical location or locations) are established in advance, and procedures for coordinated dissemination of information to the public are established.

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

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

(10) A range of protective actions have been developed for the plume exposure pathway EPZ for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

(11) Means for controlling radiological exposures, in an emergency, are established for emergency workers. The means for controlling radiological exposures shall include exposure guidelines consistent with EPA Emergency Worker and Lifesaving Activity Protective Action Guides.

(12) Arrangements are made for medical services for contaminated injured individuals.

(13) General plans for recovery and reentry are developed.

(14) Periodic exercises are (will be) conducted to evaluate major portions of emergency response capabilities, periodic drills are (will be) conducted to develop and maintain key skills, and deficiencies identified as a result of exercises or drills are (will be) corrected.

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

(16) Responsibilities for plan development and review and for distribution of emergency plans are established, and planners are properly trained.

(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 operations. Where an applicant for an operating license asserts that its inability to demonstrate compliance with the requirements of paragraph (b) of this section results wholly or substantially from the decision of state and/or local governments not to participate further in emergency planning, an operating license may be issued if the applicant demonstrates to the Commission's satisfaction that

(i) The applicant's inability to comply with the requirements of paragraph (b) of this section is wholly or substantially the result of the non-participation of state and/or local governments.

(ii) The applicant has made a sustained, good faith effort to secure and retain the participation of the pertinent state and/or local governmental authorities, including the furnishing of copies of its emergency plan.

(iii) The applicant's emergency plan provides reasonable assurance that public health and safety is not endangered by operation of the facility con-

cerned. To make that finding, the applicant must demonstrate that, as outlined below, adequate protective measures can and will be taken in the event of an emergency. A utility plan will be evaluated against the same planning standards applicable to a state or local plan, as listed in paragraph (b) of this section, with due allowance made both for—

(A) Those elements for which state and/or local non-participation makes compliance infeasible and

(B) The utility's measures designed to compensate for any deficiencies resulting from state and/or local non-participation. In making a determination on the adequacy of a utility plan, the NRC will recognize the reality that in an actual emergency, state and local government officials will exercise their best efforts to protect the health and safety of the public. The NRC will determine the adequacy of that expected response, in combination with the utility's compensating measures, on a case-by-case basis, subject to the following guidance. In addressing the circumstance where applicant's inability to comply with the requirements of paragraph (b) of this section is wholly or substantially the result of non-participation of state and/or local governments, it may be presumed that in the event of an actual radiological emergency state and local officials would generally follow the utility plan. However, this presumption may be rebutted by, for example, a good faith and timely proffer of an adequate and feasible state and/or local radiological emergency plan that would in fact be relied upon in a radiological emergency.

(2) Generally, the plume exposure pathway EPZ for nuclear power plants shall consist of an area about 10 miles (16 km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 km) in radius. The exact size and configuration of the EPZs surrounding a particular nuclear power reactor shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. The size of the EPZs also may be determined on a case-by-case basis for gas-cooled nuclear reactors and for reactors with an authorized power level less than 250 MW thermal. The plans for the ingestion pathway shall focus on such actions as are appropriate to protect the food ingestion pathway.

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, 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 assessment of the applicant's emergency plans against the pertinent standards in paragraph (b) of this section and Appendix E of this Part.

[Sec. 50.47 as added August 19, 1980, effective November 3, 1980 (45 F. R. 55402); amended effective July 13, 1982 (47 F. R. 30232); officially corrected September 15, 1982 (47 F. R. 40336); amended July 6, 1984, effective August 6, 1984 (49 F. R. 27733); amended effective May 8, 1985 (50 F. R. 19323); amended November 3, 1987, effective December 3, 1987 (52 F. R. 42078).]

Document 10:

10 CFR Part 50, Appendix E (after 1987 Amendment)

APPENDIX E—EMERGENCY PLANNING AND PREPAREDNESS FOR PRODUCTION AND UTILIZATION FACILITIES

[§ 7470]

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- I. Introduction
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- V. Implementing Procedures

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 a 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 Zones¹ (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.²

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.

II. The Preliminary Safety Analysis Report

The Preliminary Safety Analysis Report shall contain sufficient information to ensure the compatibility of proposed emergency plans for both onsite areas and the EPZs, with facility design features, site layout, and site location with respect to such considerations as access routes, surrounding population

¹ EPZs for power reactors are discussed in NUREG-0396, EPA 520/1-78-016, "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants," December 1976. The size of the EPZs for a nuclear power plant shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. The size of the EPZs also may be determined on a case-by-case

basis for gas-cooled nuclear reactors and for reactors with an authorized power level less than 250 MW thermal. Generally, the plume exposure pathway EPZ for nuclear power plants with an authorized power level greater than 250 MW thermal shall consist of an area about 19 miles (16 km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (km) in radius.

² Regulatory Guide 2.8 will be used as guidance for the acceptability of research and test reactor emergency response plans.

distributions, land use, and local jurisdictional boundaries for the EPZs in the case of nuclear power reactors as well as the means by which the standards of § 50.47(b) will be met.

As a minimum, the following items shall be described:

A. Onsite and offsite organizations for coping with emergencies and the means for notification, in the event of an emergency, of persons assigned to the emergency organizations.

B. Contacts and arrangements made and documented with local, State, and Federal governmental agencies with responsibility for coping with emergencies, including identification of the principal agencies.

C. Protective measures to be taken within the site boundary and within each EPZ to protect health and safety in the event of an accident; procedures by which these measures are to be carried out (e.g., in the case of an evacuation, who authorizes the evacuation, how the public is to be notified and instructed, how the evacuation is to be carried out); and the expected response of offsite agencies in the event of an emergency.

(D) Features of the facility to be provided for onsite emergency first aid and decontamination and for emergency transportation of onsite individuals to offsite treatment facilities.

E. Provisions to be made for emergency treatment at offsite facilities of individuals injured as a result of licensed activities.

F. Provisions for a training program for employees of the licensee, including those who are assigned specific authority and responsibility in the event of an emergency, and for other persons who are not employees of the licensee but whose assistance may be needed in the event of a radiological emergency.

G. A preliminary analysis that projects the time and means to be employed in the notification of State and local governments and the public in the event of an emergency. A nuclear power plant applicant shall perform a preliminary analysis of the time required to evacuate various sectors and distances within the plume exposure pathway EPZ for transient and permanent populations, noting major impediments to the evacuation or taking of protective actions.

H. A preliminary analysis reflecting the need to include facilities, systems, and methods for identifying the degree of seriousness and potential scope of radiological consequences of emergency situations within and outside the site boundary, including capabilities for dose projection using real-time meteorological information and for dispatch of radiological monitoring teams within the EPZs; and a preliminary analysis reflecting the role of the onsite technical support center and of the near-site emergency operations facility in assessing information, recommending protective action, and disseminating information to the public.

III. The Final Safety Analysis Report

The Final Safety Analysis Report shall contain the plans for coping with emergencies. The plans shall be an expression of the overall concept of operation; they shall describe the essential elements of advance planning that have been considered and the provisions that have been made to cope with emergency situations. The plans shall incorporate information about the emergency response roles of supporting organizations and offsite agencies. That information shall be sufficient to provide assurance of coordination among the supporting groups and with the licensee.

The plans submitted must include a description of the elements set out in Section IV for the Emergency Planning Zones (EPZs)² to an extent sufficient to demonstrate that the plans provide reasonable assurance that adequate protective measures can and will be taken in the event of an emergency.

IV. Content of Emergency Plans

The applicant's emergency plans shall contain, but not necessarily be limited to, information needed to demonstrate compliance with the elements set forth below, i. e., organization for coping with radiation emergencies, assessment action, activation of emergency organization, notification procedures, emergency facilities and equipment, training, maintaining emergency preparedness, and recovery. In addition, the emergency response plans submitted by an applicant for a nuclear power reactor operating license shall contain information needed to demonstrate compliance with the standards described in Section 50.47(b), and they will be evaluated against those standards. The nuclear power reactor operating license applicant shall also provide an analysis of the time required to evacuate and for taking other protective actions for various sectors and distances within the plume exposure pathway EPZ for transient and permanent populations.

A. Organization

The organization for coping with radiological emergencies shall be described, including definition of authorities, responsibilities, and duties of individuals assigned to the licensee's emergency organization and the means for notification of such individuals in the event of an emergency. Specifically, the following shall be included:

1. A description of the normal plant operating organization.
2. A description of the onsite emergency response organization with a detailed discussion of:
 - a. Authorities, responsibilities, and duties of the individual(s) who will take charge during an emergency;
 - b. Plant staff emergency assignments;
 - c. Authorities, responsibilities, and duties on an onsite emergency coordinator who shall be in charge of the exchange of information with offsite authorities responsible for coordinating and implementing offsite emergency measures.
3. A description, by position and function to be performed, of the licensee's headquarters personnel who will be sent to the plant site to augment the onsite emergency organization.
4. Identification, by position and function to be performed, of persons within the licensee organization who will be responsible for making offsite dose projections, and a description of how these projections will be made and the results transmitted to State and local authorities, NRC, and other appropriate governmental entities.
5. Identification, by position and function to be performed, of other employees of the licensee with special qualifications for coping with emergency conditions that may arise. Other persons with special qualifications, such as consultants, who are not employees of the licensee and who may be called

²Regulatory Guide 2.6 will be used as guidance for the acceptability of research and test reactor emergency response plans.

upon for assistance for emergencies shall also be identified. The special qualifications of these persons shall be described.

6. A description of the local offsite services to be provided in support of the licensee's emergency organization.

7. Identification of, and assistance expected from, appropriate State, local, and Federal agencies with responsibilities for coping with emergencies.

8. Identification of the State and/or local officials responsible for planning for, ordering, and controlling appropriate protective actions, including evacuations when necessary.

B. Assessment Actions

The means to be used for determining the magnitude of and for continually assessing the impact of the release of radioactive materials shall be described, including emergency action levels that are to be used as criteria for determining the need for notification and participation of local and State agencies, the Commission, and other Federal agencies, and the emergency action levels that are to be used for determining when and what type of protective measures should be considered within and outside the site boundary to protect health and safety. The emergency action levels shall be based on in-plant conditions and instrumentation in addition to onsite and offsite monitoring. These emergency action levels shall be discussed and agreed on by the applicant and State and local governmental authorities and approved by NRC. They shall also be reviewed with the State and local governmental authorities on an annual basis.

C. Activation of Emergency Organization

The entire spectrum of emergency conditions that involve the alerting or activating of progressively larger segments of the total emergency organization shall be described. The communication steps to be taken to alert or activate emergency personnel under each class of emergency shall be described. Emergency action levels (based not only on onsite and offsite radiation monitoring information but also on readings from a number of sensors that indicate a potential emergency, such as the pressure in containment and the response of the Emergency Core Cooling System) for notification of offsite agencies shall be described. The existence, but not the details, of a message authentication scheme shall be noted for such agencies. The emergency classes defined shall include: (1) notification of unusual events, (2) alert, (3) site area emergency, and (4) general emergency. These classes are further discussed in NUREG-0654; FEMA-REP-1.

D. Notification Procedures

1. Administrative and physical means for notifying local, State, and Federal officials and agencies and agreements reached with these officials and agencies for the prompt notification of the public and for public evacuation or other protective measures, should they become necessary, shall be described. This description shall include identification of the appropriate officials, by title and agency, of the State and local government agencies within the EPZs.

2. Provisions shall be described for yearly dissemination to the public within the plume exposure pathway EPZ of basic emergency planning information, such as the methods and times required for public notification and the protective actions planned if an accident occurs, general information as to the nature and effects of radiation, and a listing of local broadcast stations that will be used for dissemination of information during an emergency. Signs or other measures shall also be used to disseminate to any transient popu-

lation within the plume exposure pathway EPZ appropriate information that would be helpful if an accident occurs.

3. A licensee shall have the capability to notify responsible State and local governmental agencies within 15 minutes after declaring an emergency. The licensee shall demonstrate that the State/local officials have the capability to make a public notification decision promptly on being informed by the licensee of an emergency condition. By February 1, 1982, each nuclear power reactor licensee shall demonstrate that administrative and physical means have been established for alerting and providing prompt instructions to the public within the plume exposure pathway EPZ. The four-month period in 10 CFR 50.54(s)(2) for the correction of emergency plan deficiencies shall not apply to the initial installation of this public notification system that is required by February 1, 1982. The four month period will apply to correction of deficiencies identified during the initial installation and testing of the prompt public notification systems as well as those deficiencies discovered thereafter. The design objective of the prompt public notification shall be to have the capability to essentially complete the initial notification of the public within the plume exposure pathway EPZ within about 15 minutes. The use of this notification capability will range from immediate notification of the public (within 15 minutes of the time that State and local officials are notified that a situation exists requiring urgent action) to the more likely events where there is substantial time available for the State and local governmental officials to make a judgment whether or not to activate the public notification system. Where there is a decision to activate the notification system, the State and local officials will determine whether to activate the entire notification system simultaneously or in a graduated or staged manner. The responsibility for activating such a public notification system shall remain with the appropriate government authorities.

E. Emergency Facilities and Equipment

Adequate provisions shall be made and described for emergency facilities and equipment, including:

1. Equipment at the site for personnel monitoring;
2. Equipment for determining the magnitude of and for continuously assessing the impact of the release of radioactive materials to the environment;
3. Facilities and supplies at the site for decontamination of onsite individuals;
4. Facilities and medical supplies at the site for appropriate emergency first aid treatment;
5. Arrangements for the services of physicians and other medical personnel qualified to handle radiation emergencies onsite;
6. Arrangements for transportation of contaminated injured individuals from the site to specifically identified treatment facilities outside the site boundary;
7. Arrangements for treatment of individuals injured in support of licensed activities on the site at treatment facilities outside the site boundary;
8. A licensee onsite technical support center and a licensee near-site emergency operations facility from which effective direction can be given and effective control can be exercised during an emergency;
9. At least one onsite and one offsite communications system; each system shall have a backup power source.

All communication plans shall have arrangements for emergencies, including titles and alternates for those in charge at both ends of communication links and the primary and backup means of communication. Where consistent with the function of the governmental agency, these arrangements will include:

a. Provision for communications with contiguous State/local governments within the plume exposure pathway EPZ. Such communications shall be tested monthly.

b. Provision for communications with Federal emergency response organizations. Such communications systems shall be tested annually.

c. Provision for communications among the nuclear power reactor control room, the onsite technical support center, and the near-site emergency operations facility; and among the nuclear facility, the principal State and local emergency operations centers, and the field assessment teams. Such communications systems shall be tested annually.

d. Provisions for communications by the licensee with NRC Headquarters and the appropriate NRC Regional Office Operations Center from the nuclear power reactor control room, the onsite technical support center, and the near-site emergency operations facility. Such communications shall be tested monthly.

F. Training

The program to provide for (1) the training of employees and exercising, by periodic drills, of radiation emergency plans to ensure that employees of the licensee are familiar with their specific emergency response duties and (2) the participation in the training and drills by other persons whose assistance may be needed in the event of a radiation emergency shall be described. This shall include a description of specialized initial training and periodic retraining programs to be provided to each of the following categories of emergency personnel:

- a. Directors and/or coordinators of the plant emergency organization;
- b. Personnel responsible for accident assessment, including control room shift personnel;
- c. Radiological monitoring teams;
- d. Fire control teams (fire brigades);
- e. Repair and damage control teams;
- f. First aid and rescue teams;
- g. Medical support personnel;
- h. Licensee's headquarters support personnel;
- i. Security personnel.

In addition, a radiological orientation training program shall be made available to local services personnel, e.g., local emergency services/Civil Defense, local law enforcement personnel, local news media persons.

The plan shall describe provisions for the conduct of emergency preparedness exercises as follows: Exercises shall test the adequacy of timing and content of implementing procedures and methods, test emergency equipment and communication networks, test the public notification system, and ensure that emergency organization personnel are familiar with their duties.²

² Use of site specific simulators or computers is acceptable for any exercise.

1. A full participation* exercise which tests as much of the licensee, state and local emergency plans as is reasonably achievable without mandatory public participation shall be conducted for each site at which a power reactor is located for which the first operating license for that site is issued after July 13, 1982. This exercise shall be conducted within two years before the issuance of the first operating license for full power (one authorizing operation above 5% of rated power) of the first reactor and shall include participation by each State and local government within the plume exposure pathway EPZ and each State within the ingestion exposure pathway EPZ. If the full participation exercise is conducted more than one year prior to issuance of an operating license for full power, an exercise which tests the licensee's onsite emergency plans shall be conducted within one year before issuance of an operating license for full power. This exercise need not have State or local government participation.

2. Each licensee at each site shall annually exercise its emergency plan.

3. Each licensee at each site shall exercise with offsite authorities such that the State and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation⁵ by States and local governments, within the plume exposure pathway EPZ. State and local governments that have fully participated in a joint exercise since October 1, 1982, are eligible to fully participate in emergency preparedness exercises on a biennial frequency. The level of participation shall be as follows:

(a) A State shall at least partially participate in each offsite exercise at each site.

(b) A State shall fully participate in at least one offsite exercise every 2 years.

(c) At least once every 7 years, all States within the plume exposure pathway EPZ for a given site must fully participate in an offsite exercise for that site. This exercise must also involve full participation by local governments within the plume exposure pathway EPZ.

(d) Partial participation by a local government during an offsite exercise for a site is acceptable only when the local government is fully participating in a biennial exercise at another site.

(e) Each State within any ingestion exposure pathway EPZ shall exercise its plans and preparedness related to ingestion exposure pathway measures at least once every 5 years.

(f) Licensees shall enable any State or local government located within the plume exposure pathway EPZ to participate in annual exercises when requested by such State or local government.

4. Remedial exercises will be required if the emergency plan is not satisfactorily tested during the biennial exercise, such that NRC, in con-

* "Full participation" when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite local and State authorities and licensee personnel physically and actively take part in testing their integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant. "Full participation" includes testing the major observable portions of the onsite and offsite emergency plans and mobilization of State, local and licensee personnel and other resources in sufficient numbers

to verify the capability to respond to the accident scenario.

⁵ "Partial participation" when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite authorities shall actively take part in the exercise sufficient to test direction and control functions; i.e. (a) protective action decision making related to emergency action levels, and (b) communication capabilities among affected State and local authorities and the licensee.

sultation with FEMA, cannot find reasonable assurance that adequate protective measures can be taken in the event to a radiological emergency. The extent of State and local participation in remedial exercises must be sufficient to show that appropriate corrective measures have been taken regarding the elements of the plan not properly tested in the previous exercises.

5. All training, including exercises, shall provide for formal critiques in order to identify weak or deficient areas that need correction. Any weaknesses or deficiencies that are identified shall be corrected.

6. The participation of state and local governments in an emergency exercise is not required to the extent that the applicant has identified those governments as refusing to participate further in emergency planning activities, pursuant to 10 CFR 50.47(c)(1). In such cases, an exercise shall be held with the applicant or licensee and such governmental entities as elect to participate in the emergency planning process.

G. *Maintaining Emergency Preparedness*

Provisions to be employed to ensure that the emergency plan, its implementing procedures, and emergency equipment and supplies are maintained up to date shall be described.

H. *Recovery*

Criteria to be used to determine when, following an accident, reentry of the facility would be appropriate or when operation could be resumed shall be described.

V. *Implementing Procedures*

No less than 180 days prior to the scheduled issuance of an operating license for a nuclear power reactor or a license to possess nuclear material the applicant's detailed implementing procedures for its emergency plan shall be submitted to the Commission as specified in § 50.4. Licensees who are authorized to operate a nuclear power facility shall submit any changes to the emergency plan or procedures to the Commission, as specified in § 50.4, within 30 days of such changes.

[Appendix E as added December 11, 1970, effective January 22, 1971 (35 F. R. 19567); amended effective January 11, 1973 (38 F. R. 1271); amended August 19, 1980, effective November 3, 1980 (45 F. R. 55402); officially corrected May 29, 1981 (46 F. R. 28838); amended effective December 30, 1981 (46 F. R. 63031); amended effective July 13, 1982 (47 F. R. 30232); amended effective December 28, 1982 (47 F. R. 57670); amended July 6, 1984, effective August 6, 1984 (49 F. R. 27733); amended November 6, 1986, effective January 5, 1987 (51 F. R. 40310); amended effective May 6, 1987 (52 F. R. 16829); amended November 3, 1987, effective December 3, 1987 (52 F. R. 42078).]

Document 11:

Transcript of Telephone Prehearing Conference
in Long Island Lighting Co. (Shoreham Nuclear Power
Station, Unit 1), Docket No. 50-322-OL-3
(February 25, 1988)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

-----x
 4 In the Matter of: :
 :
 5 LONG ISLAND LIGHTING COMPANY : Docket No. 50-322-OL-3
 :
 6 (Shoreham Nuclear Power Station, : (Remand/Emergency
 Unit 1) : Planning)
 7 :
 -----x

Thursday,
February 25, 1988

Room 427
4350 East-West Highway
Bethesda, Maryland 20815

The telephone prehearing conference in the
above-entitled matter convened at 10:34 a.m.

BEFORE:

JUDGE JAMES P. GLEASON, Chairman
Atomic Safety and Licensing Board
513 Gilmoure Drive
Silver Spring, Maryland 20901

JUDGE JERRY R. KLINE
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

JUDGE FREDERICK J. SHON
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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1 APPEARANCES:

2 On behalf of the NRC Staff:

3 GEORGE E. JOHNSON, ESQ.
4 EDWIN J. REIS, ESQ.
Office of General Counsel
5 Washington, D.C. 20555
(301)492-1586

6 On behalf of Intervenor Suffolk County:

7 LAWRENCE C. LANPHER, ESQ.
8 HERBERT BROWN
9 KARLA J. LETSCHE
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1800 M Street, N.W.
10 Washington, D.C. 20036-5891
(202)778-9011

11 On behalf of Intervenor State of New York:

12 RICHARD J. ZAHNLEUTER, ESQ.
13 Special Counsel to the Governor
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15 (518)474-1273

16 On behalf of LILCO:

17 DONALD P. IRWIN, ESQ.
18 JAMES N. CHRISTMAN, ESQ.
LEE ZEUGIN
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20 Richmond, Virginia 23212
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21 On behalf of FEMA:

22 WILLIAM R. CUMMING, ESQ.
23 Office of General Counsel
500 C Street, S.W. - Room 840
24 Washington, D.C. 20472
25 (202)646-4103

P R O C E E D I N G S

1
2 JUDGE GLEASON: This is a telephone conference
3 called by the Board on Emergency Planning, the OL-3 Board,
4 with the parties to communicate a decision with respect
5 to the summary disposition motions on the so-called legal
6 authority contentions and also to provide some guidance
7 with respect to the procedure from here on out.

8 With me here in the conference is Judge Shon
9 and Judge Kline. And I would like to have you identify
10 yourselves again for the record for the Reporter because
11 I was just prior to this trying to get to the question of
12 whether we were coming through loud and clear all right.

13 So if we could do it in this order: with the
14 Applicant, with the Staff, with FEMA, with the Intervenors,
15 representatives of both the county and the state of
16 New York . It would be helpful.

17 MR. IRWIN: Judge Gleason, this is Mr. Irwin
18 for Long Island Lighting Company. With me are Messrs.
19 Christman and Zeugin.

20 MR. JOHNSON: This is George E. Johnson
21 representing the NRC Staff. And with me is Edwin J. Reis,
22 Office of the Staff.

23 MR. CUMMING: This is William R. Cumming, Counsel
24 for FEMA:

25 MR. LANPHER: Mr. Lanpher, Counsel for Suffolk

1 County. With me are Mr. Brown and Ms. Letsche.

2 MR. ZAHNLEUTER: Richard Zahnleuter representing
3 Governor Cuomo and the State of New York.

4 JUDGE GLEASON: All right. Thank you.

5 The decision of the Board with respect to
6 the motions for summary disposition filed by the Applicant
7 is that the Applicant has not proven that there are no
8 general issues to be heard in connection with the eight
9 issues pending before the Board, the so-called legal
10 authority issues.

11 Nor can the Board conclude that the Intervenors
12 have had an adequate opportunity to evaluate changes in
13 LILCO's Provision 9 which are relevant to the issues
14 involved.

15 Therefore, the Board is denying the motions with
16 respect to the eight contentions that are still pending
17 before the Board.

18 I do want to emphasize that the Board's decision
19 is not based on the Intervenors' submissions of material
20 facts. Rather it is based on the responses and the
21 affidavits submitted thereto.

22 I wanted to state this now because our denial
23 of this motion should not be construed as affirming the
24 necessary relevance to the proceeding of those issues
25 raised in the so-called memorandum of facts, statement of

1 facts.

2 Our written opinions will provide a further
3 clarification of this clarification, if you will. Now
4 that is all that I really care to say with respect to the
5 decision of the Board on the motions.

6 Let me get on with the question of some guidance
7 to the parties. There is of course considerable guidance
8 by the Commission both in the 8613 remand decision, in
9 the new rule itself, and particularly in the discussion
10 and commentary that accompanies the publication of that
11 rule.

12 We must predicate our judgements on whether
13 LILCO's emergency plan meets the regulatory and criteria
14 requirements on the fact that government officials--state
15 and county--will produce a best efforts response to protect
16 the public's health and safety.

17 And we must presume that that response will
18 follow the LILCO plan, a presumption that is rebuttable
19 only by timely evidence that the Intervenors would follow
20 a different but adequate and feasible plan that could
21 be relied upon.

22 This of course just cites the regulatory
23 framework but it does, it seems to us, point out that there
24 are two avenues that one could follow and can be followed.

25 Let me talk for a minute on the question of

1 burden of proof and burden of proceeding during the
2 forthcoming hearing.

3 As a preliminary but important matter, let
4 me discuss our views of the issues for that hearing first.
5 And I am going to go off the record here for a minute
6 because there is one thing I have to clarify with my
7 Board members.

8 I will be right back. It will just take a second.

9 (Discussion off the record)

10 All right. This is Judge Gleason and I am
11 back again.

12 First of all, the Board will not permit the filing
13 of any additional motions for summary disposition with
14 respect to the so-called legal authority contentions or,
15 as a matter of fact, with respect to any of the remaining
16 issues that are before us.

17 We, in our hopeful management of this case,
18 believe that any further filing would be an unnecessary
19 diversion to the main task and we just do not want to
20 receive any further motions in that connection.

21 We have to bring the remaining issues to a
22 hearing and we have to get them resolved at our level of
23 adjudication as promptly as we can do so.

24 It appears to us that one effect of the new
25 rule is to have us--meaning the Board and the parties--

1 prescind, if you will, from a strict reading of the
2 contentions remaining --contentions 1, 2, 4, 5, 6, 7, 8 and
3 10--concerning the legal authority question.

4 And instead, concentrate on whether the local
5 plan with its concomitant but best efforts or other response
6 meets the regulatory requirements. Therefore, in that
7 context the issues to be litigated have to reflect that
8 emphasis.

9 It would appear to us therefore that the
10 contentions should raise the issue to be litigated and
11 resolved in the following manner. I won't go through all
12 eight of the contentions because they follow pretty much
13 the same format and I will spell it out further in the
14 order that we will send out confirming this decision and this
15 guidance we are giving.

16 If we take contention 5, the issue in the light
17 of the new rule really is this: whether LILCO's emergency
18 plan and the best efforts of the state and county governments
19 will satisfy regulatory requirements concerning the
20 activation of sirens and the directing of emergency
21 broadcast system messages.

22 I will read one more, contention 6. The issue
23 there it seems is whether LILCO's emergency plan and
24 the best efforts of state and county governments will
25 satisfy the regulatory requirements concerning the making

1 of decisions and official recommendations to the public
2 on appropriate actions necessary to protect public health
3 and safety.

4 And as I indicated before, each contention
5 should be modified to read accordingly. Now let me talk
6 briefly about the burden of proof and the burden of going
7 forward.

8 If we understand LILCO's case clearly, it is
9 basically that based on matters either adjudicated or
10 unprotested in the record, material facts accepted by the
11 Board, prior decisions of the Board and relevant parts
12 of Revision 9, it can satisfy its burden of proof that the
13 LILCO plant, supplemented by a best efforts response, will
14 be adequate to meet the standards, that adequate protection
15 measures with respect to those measures can and will be
16 taken in the event of an emergency.

17 And therefore this plan does provide reasonable
18 assurance that public health and safety is not endangered
19 by operation of the Shoreham facility.

20 We believe it would be helpful, as the Intervenors
21 I believe have requested, assuming the above summary is
22 correct, that since the record in this case is very
23 lengthy and in many cases a different kind of circumstances
24 were prevailing at least in the minds of parties--but since
25 the record is basically so lengthy, that LILCO should

1 cite at the outset those parts of the record on which
2 its case is partly founded.

3 That is not to say that it would foreclose
4 them from bringing up other parts. But at least we ought
5 to make an effort to keep everybody advised as the case
6 goes on as to where the foundation of the particular case
7 is with respect to the issues still in front of us.

8 Now additionally, the Commission in CLI-8613
9 has outlined five or six areas, most of which evolve around an
10 issue of time, which the Board affirms are required to be
11 addressed by the parties in the forthcoming proceeding.

12 Now once having established, assuming the
13 summary of the Applicant's case is correct, having
14 established in the record what will be essentially a prime
15 facie case on the part of LILCO, the burden of going
16 forward will then shift to the Intervenors.

17 Now its burden, simply stated, would be to
18 demonstrate that LILCO's emergency plan supplemented by
19 a best efforts response or some other response will not
20 meet the adequacy standards with respect to the issues
21 before us.

22 And therefore, no reasonable assurance finding
23 can be made as we indicated. That adequate standard of
24 course is that adequate measures will be taken and can be
25 taken in an emergency.

1 In this context, the lack of legal authority
2 cannot in our judgement be viewed as a prohibition
3 nor can protestations that state and county officials
4 would not use the LILCO plan if another timely proffer
5 of adequately responding in an emergency is not made.

6 That is a little bit of a convoluted sentence
7 or statement that I made. All we are saying in that
8 context is that there is going to be a positive responsibility
9 on the part of the Intervenors to demonstrate with
10 evidence that the LILCO plan, as I have outlined it
11 before, is inadequate.

12 And a defense of no legal authority or just
13 protestations that the state and county officials would
14 not use the plan will not be adequate in the absence of
15 another timely offer of another adequate plan which will
16 respond to their emergency.

17 Now generally that completes the guidance which
18 the Board cares to give at this point or which the Board
19 cares to give, I might say. It really is the responsibilities
20 of the parties to litigate this.

21 It is not for the Board to decide the issue.
22 We will be looking forward to receiving your proposed
23 schedule and we will attempt to get out as promptly as
24 possible our written opinion on the summary disposition
25 motions which we have decided today.

1 Excuse me. I have to go off the record here
2 one more minute.

3 (Discussion off the record)

4 I am back now. This is Judge Gleason again.

5 I wanted to advise you that the Board has
6 granted Intervenors' motion to extend the discovery on
7 the school bus driver issue to February 28th.

8 JUDGE KLINE: 29th.

9 JUDGE GLEASON: 29th, I am sorry.

10 All right. Now are there any questions which
11 relate to clarification with respect to things that I have
12 said either on the decision or the action with the going
13 forward of the issues?

14 MR. LANPHER: Judge Gleason, this is Mr. Lanpher.
15 Did I hear correctly that the order which will reflect
16 these various things that people are trying to take notes
17 on will be out later today?

18 JUDGE GLEASON: Yes it will.

19 MR. LANPHER: We would appreciate it, as is the
20 policy of your secretary, if she would give us a call
21 because it is difficult to take this down, the notes.

22 I would just like to state on behalf of Suffolk
23 County that we do object to the rulings that have been
24 issued. We don't think that they are correct. We will
25 address them in an appropriate pleadings to the Board.

1 JUDGE GLEASON: Fine.

2 MS. BROWN: This is Mr. Brown for the County.
3 Could you please provide us with some illumination of
4 when you might be issuing an opinion of the reasons for the
5 Board's rulings that you made today?

6 JUDGE GLEASON: The rulings on the summary
7 disposition motion?

8 MR. BROWN: Yes.

9 JUDGE GLEASON: I just cannot do that. We are
10 working hard on them and we get them out as rapidly as
11 we can. It really is not essential as far as going ahead
12 with your responsibilities. You just have to know whether
13 it is a litigatable issue or it is not.

14 I cannot give you any firm date. We will try to
15 do the best we can.

16 MR. BROWN: This is Mr. Brown again. There is
17 actually one way in which it does have some relevance
18 to our responsibilities to our client in particular. As
19 Mr. Lanpher mentioned a minute ago, we do have objections
20 to the rulings.

21 We in fact believe they are fundamentally in
22 error. And it is not possible for us to bring to the
23 Board's attention the reasons for our conclusion until we
24 understand the rationale of the Board.

25 That puts us in a--

1 JUDGE GLEASON: I do not understand how you can
2 have any kind of a motion of fundamental error with
3 respect to decisions that have been announced or granted
4 in your interest or in your behalf.

5 We were talking about the summary disposition
6 motions.

7 MR. BROWN: I think that you, if I am not
8 incorrect--and I am certainly prepared to be corrected.
9 But my understanding was that you have ruled that the
10 phraseology may be presumed and the other use of the word
11 "may" in the regulations in fact stands for the word "will"
12 and that the Board felt that it must make certain conclusions
13 which we believe are categorically contrary to the
14 regulatory intent.

15 We would want to know the Board's rationale
16 for that so that we could bring it to the Board's attention
17 and, if necessary, take any additional steps which we
18 at that point thought was in the interest of our client.

19 JUDGE GLEASON: Well, you are talking about with
20 respect to the guidance that the Board is giving you.

21 MR. BROWN: Perhaps. I am certainly talking about
22 what you said.

23 JUDGE GLEASON: Well, I said that that was
24 guidance because you are the people that wanted the Board
25 to give guidance and we are giving it to the extent that we

1 have made some conclusions. And I hope to have that out
2 today.

3 MR. BROWN: Conclusions with respect to the
4 "may be presumed" as opposed to "will be presumed" you
5 expect to have out today?

6 JUDGE GLEASON: Yes.

7 MR. BROWN: Thank you.

8 MR. JOHNSON: Your Honor, this is George Johnson.
9 I was wondering in light of the timing of your announcement
10 this morning whether you would consider extending the time
11 for the parties to come up with a schedule?

12 JUDGE GLEASON: I think we would consider that
13 favorably. Do you have some suggestions to make?

14 MR. JOHNSON: Waiting until Tuesday.

15 MR. LANPHER: Waiting until Tuesday. Suffolk
16 County does not object to waiting until Tuesday. This is
17 Mr. Lanpher who is speaking. I think that makes sense.

18 JUDGE GLEASON: All right.

19 MR. IRWIN: Judge Gleason, this is Mr. Irwin.
20 We are confident that all the work can be done by Tuesday
21 and probably before. We don't object to that extension.

22 JUDGE GLEASON: Is there any objection to waiting
23 until Tuesday?

24 MR. ZAHNLEUTER: Zahnleuter. And I have no
25 objection either, especially since I have not received

1 any orders as of this date probably because I am in
2 Albany and it takes longer.

3 I would appreciate the time.

4 MR. CUMMING: FEMA defers to the Staff's
5 suggestion.

6 JUDGE GLEASON: All right. Well then the Board
7 will extend the responsibilities to come up with
8 schedule requirements until next Tuesday, the close of
9 business next Tuesday.

10 MR. CUMMING: Thank you.

11 JUDGE GLEASON: All right, Gentlemen. That is
12 about all we have to say.

13 MR. CUMMING: Judge Gleason?

14 JUDGE GLEASON: Yes.

15 MR. CUMMING: This is Bill Cumming from FEMA.

16 JUDGE GLEASON: Yes.

17 MR. CUMMING: Are Judge Kline and Judge Shon
18 still on?

19 JUDGE GLEASON: Yes they are.

20 MR. CUMMING: I think it might be an appropriate
21 time for me to notify the Board of a thing that we have
22 basically notified all the parties and NRC, and that is
23 that FEMA's review of Revision 9 this time, because of
24 the fact that now there is in fact in place a utility
25 plan rule and supplement to the NUREG which concerns

1 utility plan--FEMA would in fact be making the overall
2 bottomline finding on the plan with respect to its
3 adequacy subject then to the conduct of the exercise.

4 So there is in fact a difference in FEMA's
5 fundamental legal position from where we were with
6 respect to the OL-5 in the prior proceeding.

7 And I think the Board should be on notice
8 that that is our objective in a bottomline finding
9 with respect to Revision 9 and ultimately on the exercise
10 conduct.

11 JUDGE GLEASON: All right. We understand what
12 you are saying.

13 Anything else, Gentlemen?

14 MR. IRWIN: Not from LILCO, Judge Gleason.

15 MR. JOHNSON: Nothing from the Staff.

16 JUDGE GLEASON: Anything from Intervenors?

17 MR. LANPHER: No.

18 JUDGE GLEASON: All right. Thank you,
19 Gentlemen.

20 (Whereupon, at 11:00 a.m., the telephone
21 conference in this matter was concluded)
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CERTIFICATE

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This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name: ATOMIC SAFETY AND LICENSING BOARD:
LONG ISLAND LIGHTING COMPANY (SHOREHAM NUCLEAR
POWER STATION, UNIT 1)

Docket Number: 50-322-OL-3

Place: Bethesda, Maryland

Date: February 25, 1988

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken stenographically by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

/s/ Donna L. Cook 25 February 88

(Signature typed): Donna L. Cook 25 February 88

Official Reporter

Heritage Reporting Corporation

Document 12:

Long Island Lighting Co., (Shoreham Nuclear Power Station, Unit 1), Confirmatory Memorandum and Order (Ruling on LILCO's Motions for Summary Disposition of Contentions 1, 2, 4, 5, 6, 7, 8 and 10, and Board Guidance on Issues for Litigation) slip op. (February 29, 1988)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

James P. Gleason, Chairman
Dr. Jerry R. Kline
Mr. Frederick J. Shon

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station,
Unit 1)

Docket No. 50-322-OL-3
(Emergency Planning)
(ASLBP No. 50-322-OL3-R2)
February 29, 1988

CONFIRMATORY MEMORANDUM AND ORDER
(Ruling on LILCO's Motions for Summary Disposition
of Contentions 1, 2, 4, 5, 5, 7, 8 and 10, and
Board Guidance on Issues for Litigation)

The Board confirms herein decisions and guidance provided in a telephone conference with the parties in this proceeding.

1. The motions for summary judgment on Contentions 1, 2, 4, 5, 6, 7, 8 and 10 filed by LILCO are denied. Written opinion will be forthcoming as soon as possible.

2. The Commission in CLI-86-13, in 10 C.F.R. 50.47(c)(1) and in commentary accompanying publication of that new regulation, has provided considerable guidance in cases where state and local governments decline to participate in emergency planning.

3. Under the new regulation, the Board must predicate its judgment on whether LILCO's emergency plan can meet NRC regulatory and

criteria requirements on the fact that government officials--state and county--will produce a best efforts response to protect the public's health and safety.

4. There is a presumption that the State and County response will follow the LILCO Plan, a presumption rebuttable only by timely evidence that the Governments will follow a different but adequate and feasible plan that can be relied on or by other evidence of like kind. This indicates that there are two courses that can be followed.

5. In attempting to properly manage this case, the Board will not permit any further motions for summary disposition to be filed on any of the remaining issues.

6. The new regulation has the effect of casting the eight contentions remaining in a revised form--prescinding from the legal authority question--to one resolving whether the LILCO Plan with a best efforts or other response meets regulatory requirements.

7. The contentions should then be formulated to reflect the new emphasis so that the issue to be litigated and resolved would read as follows in Contention 5.

Whether LILCO's emergency plan and the best efforts response of the State and County governments, will satisfy regulatory requirements concerning the activation of sirens and the directing of emergency broadcast system messages.

Contention 6 would be formulated to read:

Whether LILCO's emergency plan and the best efforts response of the State and County governments will satisfy regulatory requirements concerning the making of decisions and official recommendations to the public on appropriate actions necessary to protect public health

and safety. Each of the remaining contentions should be modified to read accordingly.

8. Assuming that LILCO's case is based, as we believe it alleges, on matters adjudicated or uncontested in the record, material facts previously accepted by the Board, other prior Board rulings, and relevant parts of Revision 9 to its emergency plan, and assuming questions raised by the Commission in CLI-86-13 have been addressed, a prima facie case will have been made that LILCO's burden of proof has been satisfied, that is, that LILCO's emergency plan supplemented by a best efforts response will meet the standard that adequate protective measures with respect to the contentions can and will be taken in the event of an emergency. And that consequently, there is reasonable assurance that public health and safety is not endangered by operation of the Shoreham facility. LILCO will be required to cite the parts of the record which form the foundation of its case.

9. As indicated above, the parties will be required to address the questions raised by the Commission in CLI-86-13 which are adopted by the Board herein. These mainly raise relevant issues of time in which certain emergency actions will take place.

10. With the development of a prima facie case as conceptualized herein, the burden of going forward will then shift to Intervenors.

11. The ultimate burden of Intervenors will be to demonstrate that LILCO's emergency plan supplemented by a best efforts response does not meet the adequacy standards with respect to the matters at issue and that accordingly no reasonable assurance finding can be made.

12. However, a lack of legal authority cannot be raised under the regulation as a response against LILCO's Plan, nor can simple protestations that the State and County will not use LILCO's Plan. Acceptable rebuttals to the Plan must include positive statements of the projected behavior of the Governments. A determination to respond ad hoc would be acceptable only if accompanied by specification of the resources available for such a response, and the actions such a response could entail including the time factors involved. A failure on the part of the Governments to present a positive case for our analysis and evaluation could result in a finding of default and hence in an adverse ruling on the contention to which it applies.

No fair reading of the new rule or the statement of considerations that accompanied it can result in a conclusion that the Commission expected or would permit its rule to be interpreted in such a manner as to lead to stalemate and indefinite delay in resolution of issues in this case or any other.

The Commission's rule states in paragraph 50.47(c)(1)(iii):

In making its determination on the adequacy of a utility plan, the NRC will recognize the reality that in an actual emergency, state and local governments will exercise their best efforts to protect the health and safety of the public. The NRC will determine the adequacy of that expected response, in combination with the utility's compensating measures (Emphasis added.)

It is clear from the foregoing that we are bound by regulation to affirmatively determine the adequacy of the expected response and that the obligation on us equally binds the parties to supply the critical information needed to make that determination in any future hearing if

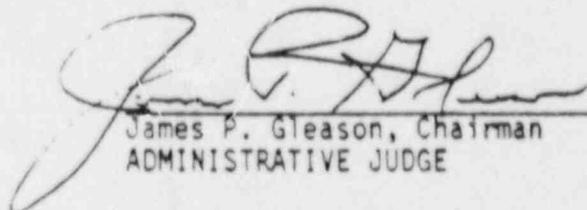
they want their views to be heard. It must be recognized that we have found in our Concluding Partial Initial Decision that it is not impossible "to fashion and implement an effective off-site emergency plan for the Shoreham Plant." PID at 427.

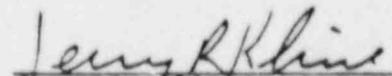
Any difference in wording between this Confirmatory Order and that used in the telephone conference referred to above is to be resolved in favor of this Order.

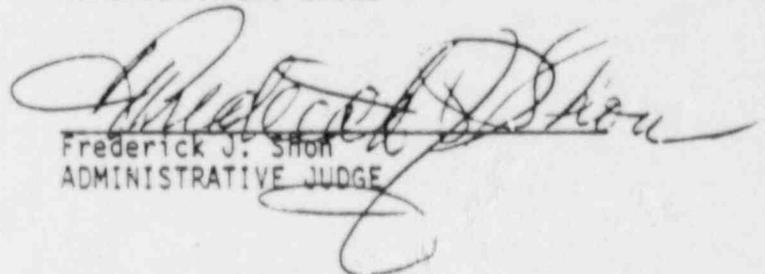
The judgments of the Board reflected herein will be amplified in our written opinion.

ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD


James P. Gleason, Chairman
ADMINISTRATIVE JUDGE


Jerry R. Kline
ADMINISTRATIVE JUDGE


Frederick J. Shon
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 29th day of February, 1988.

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be made on the basis of a presumption rather than actual evidence. The presumption is that state and local governments will follow a utility's plan for responding to a nuclear accident. As interpreted by the NRC, the presumption applies even if those governments have lawfully declared that they will not follow the utility's plan and have explained the bases for their decision. The presumption is irrebuttable as applied to state and local governments that have declined to adopt or submit their own emergency response plans.

Petitioners contend that the presumption is outside the Commission's expertise, not supported by the administrative record, and inconsistent with the Commission's own regulations. In addition, the NRC's justification for its adoption is demonstrably false.

The NRC's new rule nullifies Congress' recognition that state and local governments have a critical role in emergency preparedness and response, that their decisions not to adopt or implement emergency plans should be respected, and that decisions by such governments not to adopt plans of their own could result in the NRC being required to deny an operating license for a nuclear plant. The NRC's new rule sacrifices public safety by authorizing the licensing of nuclear plants without evidence, much less the required reasonable assurance, that emergency response plans supporting the licenses will be implemented to protect the public from the consequences of a nuclear accident.

Petitioners also contend that the NRC violated the notice and comment requirements of the Administrative Procedure Act ("APA"). The rule as originally proposed did not include the presumption. The NRC added that element to its new rule in the eleventh hour of its rulemaking, within seven days of announcing the final rule. Thus, the NRC denied state and local governments, and the public that would be at risk in a nuclear accident, the opportunity to comment and demonstrate that the new rule is insupportable in fact, law, and policy.

STATEMENT OF INTEREST

Petitioners have a direct interest in the rulemaking at issue. First, they participated in the rulemaking and opposed adoption of the rule. Second, they are participating in pending NRC licensing proceedings for the Shoreham Nuclear Power Station ("Shoreham"), in which the new rule is being applied.^{1/}

STATEMENT OF THE ISSUES

- (1) Whether the NRC's adoption of the new emergency planning rule was arbitrary and capricious.
- (2) Whether the NRC's adoption of the new emergency planning rule violated the notice and comment requirements of the APA.

I. STATEMENT OF THE CASE

A. Emergency Preparedness Requirements Adopted After the Three Mile Island Accident

1. The Absence of Emergency Preparedness Requirements Before Three Mile Island

Before the 1979 accident at the Three Mile Island nuclear plant ("TMI"), the NRC essentially ignored emergency planning around nuclear power plants.^{2/} Even before the

^{1/} Petitioners have exercised their governmental authority and have declined to adopt or implement an emergency response plan for Shoreham. Shoreham's owner, the Long Island Lighting Company ("LILCO"), challenged Petitioner Suffolk County's decision not to adopt a plan in federal and state courts. LILCO urged that the County's decision violates both federal and state law. The courts rejected LILCO's challenge, finding the County's actions to be rational and lawful. Citizens for an Orderly Energy Policy, Inc. v. County of Suffolk, 604 F. Supp. 1084 (E.D.N.Y. 1985), aff'd, 813 F.2d 570 (2d Cir. 1987); Prospect v. Cohalan, 65 N.Y.2d 867, 482 N.E.2d 1209 (1985).

^{2/} The NRC did not require advance preparedness to respond to radiological emergencies for two reasons:

(footnote continued)

TMI accident, a General Accounting Office ("GAO") Report identified the absence of emergency planning requirements as a major failing in the regulation of nuclear power. Rejecting the NRC's justification that accidents at nuclear power plants are unlikely, the GAO concluded:

[W]hile serious nuclear accidents may be highly unlikely, they are possible, and may have catastrophic consequences. Therefore, we believe that adequate State and local emergency-response plans are more than a matter of prudence but should be an integral part of the licensing process.^{3/}

The March 28, 1979 accident at the TMI plant near Harrisburg, Pennsylvania, dramatically changed nuclear plant regulation. That accident, characterized then as "the worst . . . in the history of commercial nuclear power generation,"^{4/} focused the attention of the President, Congress, the public, and ultimately the NRC, on the need for

(footnote continued from previous page)

(1) The NRC maintained that it protected public health and safety by regulating site characteristics and design features of nuclear facilities; and,

(2) The NRC believed that emergency planning was principally a responsibility of State and local governments and that the NRC did not have statutory authority over State and local governments to require them to develop or maintain emergency plans.

General Accounting Office, Comptroller General's Report to the Congress of the United States: Areas Around Nuclear Facilities Should Be Better Prepared for Radiological Emergencies, Rep. No. EMD-78-110, at 47-48 (1979) (NRC Comments).

^{3/} Id., at 49. GAO stated further:

We believe that only by linking the adequacy of the State or local capabilities to implement offsite protective actions to the licensing process can there be sufficient assurance that the public will be protected in the event of a major emergency at a nuclear powerplant. . . . Thus, if State or local authorities are unable to provide such assurance, then a potential site should be eliminated from consideration during the licensing process.

Id., at 45.

^{4/} Report of the President's Commission on the Accident at Three Mile Island, The Need for Change: The Legacy of TMI (1979) at 1.

immediate action to increase the protection available to the public in case similar or more serious accidents occurred in the future.

Following TMI, the NRC's failure to require detailed and workable emergency response plans as a prerequisite to the licensing of nuclear plants produced a torrent of criticism. Virtually every investigation of the accident concluded that the lack of adequate and implementable emergency response plans was a serious safety problem which required immediate attention.

The twelve-member Kemeny Commission, appointed by President Carter to investigate the TMI accident and the response to it, concluded that the response "was dominated by an atmosphere of almost total confusion."^{5/} The Commission noted that "[i]n an accident in which prompt defensive steps are necessary within a matter of hours, insufficient advance planning could prove extremely dangerous."^{6/}

Like the GAO, the Kemeny Commission also laid responsibility for the chaotic response to the TMI accident on the low priority given to emergency planning by the NRC. It, too, attributed the NRC's pre-TMI attitude to the NRC's "confidence in designed reactor safeguards" and its "desire to avoid raising public concern about the safety of nuclear power."^{7/} After finding that "the NRC is so preoccupied with the licensing of

^{5/} Id. at 17.

^{6/} Id. at 16. The absence of workable and tested emergency plans contributed to the chaos and confusion which dominated the scene during and immediately after the TMI accident. The majority of the communities in the TMI area had no written emergency plans to respond to the accident. Instead, emergency planning for five, ten and twenty-mile evacuation radii had to take place as the accident was unfolding. Many state and local, governmental and private entities had to participate in the response; they all attempted to deal with the emergency, and with the problems created by it, on an ad hoc basis. Commonwealth of Pennsylvania, Lieutenant Governor's Office, Report of the Governor's Commission on Three Mile Island (1980) at 74, 81, 82, 84-85.

^{7/} Report of the President's Commission on the Accident at Three Mile Island (1979) at 38.

plants that it has not given primary consideration to overall safety issues,"^{8/} the Kemeny Commission unanimously recommended, among other things, that the NRC "condition licensing upon review and approval of the state and local emergency plans."^{9/}

2. Congress Responds to Three Mile Island

a. Congress Prohibits Licensing of Plants Absent Emergency Preparedness

Congress reacted swiftly to the lessons learned from TMI about the need for actual emergency preparedness, and for detailed, workable, and tested emergency plans. In fact, Congress' consideration of the fiscal year 1980 authorization for the NRC was "dominated by the immediate consequences and the long-term implications of the accident at [TMI]."^{10/} The Congressional response to TMI was reflected in the 1980 Authorization Act, particularly Section 109, in which Congress required the NRC:

(1) to determine whether each applicant for a license to operate a nuclear power plant had submitted a state, local or utility emergency response plan that provides "rea-

^{8/} Id. at 51.

^{9/} Id. at 24. See also id. at 76 (NRC should not grant an operating license for any new plant until the state where it is to be sited has an emergency response plan reviewed and approved by the Federal Emergency Management Agency ("FEMA")). The Commission appointed by the Governor of Pennsylvania to report on TMI agreed:

[T]he federal approval process advocated by the President's Commission on TMI is essential to assure the public that no new nuclear reactors will start up in areas lacking adequate emergency planning.

Report of the Governor's Commission on Three Mile Island (1980) at 118.

^{10/} S. Rep. No. 176, 96th Cong., 1st Sess. 1 (1979).

sonable assurance that public health and safety is not endangered by the operation of the facility concerned;^{11/} and

(2) to promulgate regulations establishing minimum requirements for such a plan.^{12/}

b. Congress Recognizes the Potential for a State "Veto"

In considering the 1980 Authorization Act, Congress sought to reconcile two competing concerns: first, Congress' post-TMI insistence that adequate emergency planning and preparedness exist for every licensed nuclear plant; and second, Congress' recognition that state and local governments are responsible for emergency planning and therefore can, in their discretion, withhold support for planning activities.

The Senate version of the 1980 Authorization Act, S. 562, would have directed each applicant for an operating license for a nuclear plant to submit to the NRC a state emergency response plan. In addition, S. 562 would have conditioned the NRC's ability to license a plant on the existence of a state emergency response plan that adequately protects the public health and safety.^{13/} It also would have required the NRC to adopt rules setting forth minimum requirements for emergency planning, including "initial and periodic testing of plan feasibility in actual drills of State and local organizations which are assigned responsibilities to carry out portions of the plan."^{14/} Senator Hart, the Chairman of the Nuclear Regulation Subcommittee, characterized the bill as reflecting a fundamental lesson learned from TMI -- that reactors should not be permitted to operate

^{11/} Nuclear Regulatory Commission Appropriation Authorization, Pub. L. No. 96-295, § 109(a)(2), 94 Stat. 780, 784 (1980). See attached Addendum to Brief of Petitioners.

^{12/} *Id.* at § 109(b)(1)(A).

^{13/} 125 Cong. Rec. S. 9604 (daily ed. July 17, 1979).

^{14/} *Id.* at S. 9475.

without the existence of "fundamental plans made to accommodate an accident and to protect the lives, the safety, and the health of the people in the area."^{15/}

During the Senate debate on S. 562, senators recognized that some states might refuse to develop emergency plans.^{16/} In view of that fact, and rather than allowing states to prevent the NRC from licensing a plant, Senator Johnston offered an amendment that would have permitted the NRC itself to develop an emergency plan for any plant in a state that did not submit a plan in compliance with NRC regulations, and then to license the plant on the basis of the NRC's plan.^{17/}

Senator Johnston framed the question confronting the Senate as follows:

The issue is narrow; the issue is clear. Do you want a moratorium on a plant where a State either refuses, as is the probable case of California, or, through inadvertence or through honest mistake or through whatever reason, fails properly to submit a workable plan within the deadline?^{18/}

Senator Johnston's amendment was opposed on fundamental federalism principles. Senators stressed that the Johnston amendment would inject the federal government into an area squarely within the states' traditional police powers and would present significant constitutional problems.^{19/} Senator Hart stated these concerns succinctly:

What is contemplated here by the Senator from Louisiana . . . is a fundamental shift in government authority. It is a fundamental tampering with the federal system. It would give some authority to the Federal Government which has never before been obtained by the Federal Government in this area. I think

^{15/} Id., at S. 9476.

^{16/} See 125 Cong. Rec. S. 9463-84 (daily ed. July 16, 1979).

^{17/} Id., at S. 9471.

^{18/} Id., at S. 9476.

^{19/} Id., at S. 9472-80.

Senators who vote on this should understand that. It is a very, very fundamental political point.^{20/}

Senators who addressed this issue acknowledged that states might refuse to develop emergency plans and thereby prevent the operation of a nuclear plant. For example, Senator Simpson acknowledged that there was a possibility that a "faction opposed to nuclear power could use the mandatory planning requirements spelled out in this bill to arbitrarily shut down the operation or construction of a nuclear power plant."^{21/} Nonetheless, Senator Simpson opposed the Johnston amendment:

To propose that Congress now authorize the NRC to invade an area of traditional State authority in providing for the planning of the evacuation and sheltering of its citizens during times of natural or man-made disaster is against my sense of inherent distinction between State and Federal Governments.^{22/}

Moreover, the Senate recognized that the states, rather than the federal government, could best perform emergency planning functions given their familiarity with local resources and needs.^{23/} Indeed, Senator Simpson equated the role of the states in the emergency planning process to the state role in land-use planning:

When we . . . allow[] the Federal Government to intrude into this area, we are actually in the most sensitive of areas because we are saying to the States, 'You cannot do your own State land-use planning.'

^{20/} *Id.* at S. 9476.

^{21/} *Id.* at S. 9473.

^{22/} *Id.* at S. 9473.

^{23/} *Id.* at S. 9476.

...

Emergency planning in the State is really land-use planning plus, with oak leaf clusters. It consists of evacuation zones, shelters, highway usage and much, much more.^{24/}

After full consideration of the federalism issues, and recognizing that without the Johnston amendment the Senate bill could permit a state "veto" of plant licensing, the Senate defeated the Johnston amendment.^{25/} Senator Hart subsequently stated the effect of the Senate's vote:

[T]he Senate has . . . rejected the idea of the Federal Government imposing its will on the States in the area of emergency planning. This is an area traditionally set aside for the States.^{26/}

In December 1979, the House of Representatives approved H.R. 2608, the House version of the 1980 Authorization Act, which also responded to the lessons learned from TMI.^{27/} Like the Senate bill, the House version would have required the NRC to adopt standards for evaluating state emergency plans, to assess the adequacy of such plans, and to review the actual ability of a state to carry out evacuations during a radiological emergency. Unlike the Senate bill, it would not have conditioned the licensing and operation of nuclear plants on the existence of an NRC-approved state plan.

^{24/} *Id.* at S. 9473.

^{25/} *Id.* at S. 9478. S. 562 was passed by the full Senate on July 17, 1979. 125 Cong. Rec. S. 9601-06 (daily ed. July 17, 1979).

^{26/} *Id.* at S. 9480.

^{27/} 125 Cong. Rec. H. 11,507-08 (Dec. 4, 1979).

c. Congress Insists that the NRC Apply the Same Safety Standard to State, Local, and Utility Plans

A Senate-House conference committee addressed the differences between S. 562 and H.R. 2608.^{28/} Consistent with the defeat of the Johnston amendment, the compromise bill did not require states to submit emergency plans or authorize the NRC to impose an emergency plan on an unwilling state.

The compromise bill retained the Senate requirement that no license can be issued unless there is in place a plan that will adequately protect the public health and safety in an emergency. In response to concerns that a state could prevent the issuance of an operating license by refusing to develop a plan, the conferees "sought to avoid penalizing an applicant for an operating license if a State or locality does not submit an emergency response plan to the NRC for review" by permitting the NRC to consider a "utility plan" in the absence of a state or local plan.^{29/} Consistent with Congress' original post-TMI direction, however, the conferees authorized the NRC to grant an operating license if and only if a state, local or utility plan provided "reasonable assurance that the public health and safety is not endangered by operation of the facility."^{30/}

In addition, the Conference Report reiterated Congressional expectations, prompted by the TMI accident, that the NRC would adopt minimum requirements for emergency plans, including "initial and periodic testing of plan feasibility in actual drills."^{31/}

^{28/} H.R. Rep. No. 1070, 96th Cong., 1st Sess. 5-6 (1980).

^{29/} Id. at 27. A "utility plan" refers generally to an emergency response plan, prepared by the utility company-license applicant, which describes how that company would conduct an emergency response and protect the public in the area around the nuclear plant.

^{30/} Id.

^{31/} Id. at 27.

Thus, in enacting the 1980 Authorization Act Congress made the following decisions:

(1) No plant should operate unless there is an NRC-approved emergency plan. Congress specifically rejected the idea that an ad hoc response, such as occurred at TMI, could be sufficient.

(2) The federal government should not seek to force state and local governments to adopt an emergency plan. Congress recognized that emergency planning is an area of state and local authority, expertise, and responsibility.

(3) The NRC could consider a utility's emergency response plan but could grant a license only if the plan provided "reasonable assurance that public health and safety is not endangered by operation of the facility concerned." Congress did not insure that a utility would have the active support or resources of state or local governments in carrying out its own "utility plan" or that, without such support or resources, it would be able to meet the actual preparedness requirements established in response to the TMI accident.^{32/}

3. The NRC Responds to Three Mile Island

a. The NRC Adopts the Emergency Preparedness Rule

TMI also forced the NRC to change dramatically its views about the importance

^{32/} Congress addressed the issue of emergency planning two more times, in enacting the 1982-83 and the 1984-85 NRC Authorization Acts. Pub. L. 97-415 (1983); Pub. L. 98-553 (1984). Section 5 of Pub. L. 97-415 and Section 108 of Pub. L. 98-553 provide that the NRC may license a nuclear power plant only if a state, local or utility plan provides reasonable assurance that the public health and safety will be protected. Congress has never reacted from its post-TMI insistence on actual preparedness and adequate, implementable response plans. In fact, the House Report on the House version of the 1984-85 Authorization Act stressed that while the NRC could consider a utility plan, the Commission was not authorized to license a plant "when lack of participation in emergency planning by State, county, or local governments means it is unlikely that a utility plan could be successfully carried out." H. Rep. 103, Part 1, 98th Cong. 1st Sess. 9 (1983).

of emergency planning. As then-NRC Chairman Hendrie testified before Congress in May 1979:

The accident at Three Mile Island has made it very clear that emergency planning and preparedness is a major and integral part of nuclear regulation.

I do not think that any one needs to be persuaded that thorough emergency preparedness is an essential component in the regulatory structure protecting public health and safety.^{33/}

The NRC responded to TMI and to Congressional pressures in December 1979 by publishing for comment a proposed emergency planning rule.^{34/} The Commission acknowledged what Congress and the TMI analysts had already observed:

The proposed rule is predicated on the Commission's considered judgment in the aftermath of the accident at Three Mile Island that safe siting and design engineered features alone do not optimize protection of the public health and safety. Before the accident it was thought that adequate siting in accordance with existing staff guidance coupled with the defense-in-depth approach to design would be the primary public protection. Emergency planning was conceived as a secondary but additional measure to be exercised in the unlikely event that an accident would happen. The Commission's perspective was severely altered by the unexpected sequence of events that occurred at Three Mile Island. The accident showed clearly that the protection provided by siting and engineered safety features must be bolstered by the ability to take protective measures during the course of an accident.^{35/}

Moreover, the Commission specifically tied the need to verify the existence of adequate and implementable emergency plans to its obligation under the Atomic Energy Act to protect the public health and safety:

^{33/} Emergency Planning Around U.S. Nuclear Powerplants: Nuclear Regulatory Commission, Hearings before a Subcommittee of the Committee on Government Operations of the House of Representatives, 96th Cong., 1st Sess. 528 (1979).

^{34/} 44 Fed. Reg. 75,167 (1979).

^{35/} Id. at 75,169 (emphasis added).

[I]n carrying out its statutory mandate to protect the public health and safety, the Commission must be in a position to know that off-site government plans have been reviewed and found adequate. The Commission finds that the public can be protected within the framework of the Atomic Energy Act only if additional attention is given to emergency response planning.^{36/}

After public hearings and an extended comment period, the Commission adopted its final emergency planning rule in August 1980.^{37/} The heart of the rule was its requirement that there be a pre-licensing finding that emergency plans, judged to be "adequate" and in compliance with many specific requirements, also be capable of being implemented:

[N]o operating license for a nuclear power reactor will be issued unless a finding is made by NRC that the state of onsite and offsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.^{38/}

The requirement that there be a finding that an emergency plan is implementable (i.e., that adequate and protective measures can and will be taken), grew directly out of the TMI experience, which showed that an ad hoc response to an emergency rather than one based on a plan that has been practiced and determined to be workable by the persons who are to carry it out, is ineffective and counterproductive.

The NRC's 1980 emergency planning rule reiterated in many provisions the unacceptability, for licensing purposes, of reliance upon an ad hoc response formulated during an actual emergency. For example, the rule provided that the required finding on the state of preparedness must be based on a "review of the Federal Emergency Management Agency (FEMA) findings and determinations as to whether State and local emergency

^{36/} Id.

^{37/} 45 Fed. Reg. 55,402 (1980) (codified in 10 CFR Part 50 (1980)).

^{38/} Id. at 55,409 (10 CFR § 50.47(a)(1) (1980)) (emphasis added).

plans are adequate and capable of being implemented . . ."^{39/} The rule required that there be periodic "exercises" and "drills" of offsite emergency plans "to evaluate major portions of emergency response capabilities" and "to develop and maintain key skills."^{40/} And, it required participation by appropriate state and local government agencies in "full scale" and "small scale" exercises, which

test the adequacy of timing and content of implementing procedures and methods, test emergency equipment and communication networks, test the public notification system, and ensure that emergency organization personnel are familiar with their duties.^{41/}

Victor Gilinsky, an NRC Commissioner in 1980, described "what the Commission had in mind" when it adopted its 1980 rule:

The 1979 TMI accident had convinced us that the Atomic Energy Act's standard of "adequate protection" had to embrace readiness to shelter or evacuate people around an accident.

Such offsite readiness could not depend on improvisation. It required effective plans for state and local governmental actions, trained state and local staffs, and periodic exercises to make sure the plans would work.^{42/}

^{39/} Id. (§ 50.47(a)(2) (1980)) (emphasis added).

^{40/} Id. (§ 50.47(b)(14) (1980)).

^{41/} Id. at 55,413 (Appendix E § iV.F (1980)).

^{42/} Hearings before the Subcommittee on Energy and the Environment Committee on Interior and Insular Affairs (Apr. 28, 1987), Testimony of Victor Gilinsky at 1. See also Testimony of former NRC Commissioner John F. Ahearne, in Reauthorization of the NRC for Fiscal Years 1988 and 1989 and Nuclear Energy Planning, Hearings Before the Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works U.S. Senate, 100th Cong., 1st Sess. 260 (1987) ("the regulations that we promulgated were necessary for adequate protection of the public health and safety").

b. The NRC Recognizes the Potential for a State "Veto"

In adopting the 1980 rule, the NRC acknowledged -- as had Congress -- that the utility industry had criticized the proposed rule as "in effect giving State and local governments veto power over the operation of nuclear plants."^{43/} Notwithstanding these criticisms, the NRC promulgated the rule. In language similar to that used by Senator Simpson in opposing the Johnston amendment, the NRC stated its rationale as follows:

The Commission recognizes there is a possibility that the operation of some reactors may be affected by this rule through inaction of State and local government or an inability to comply with these rules. The Commission believes that the potential restriction of plant operation by State and local officials is not significantly different in kind or effect from the means already available under existing law to prohibit reactor operation, such as zoning, and land-use laws, certification of public convenience and necessity, State financial and rate considerations (10 CFR 50.33(f)) and Federal environmental laws. . . . The Commission believes . . . that State and local officials as partners in this undertaking will endeavor to provide fully for public protection.^{44/}

Indeed, in briefing the Commission on the 1980 rule, the NRC Staff emphasized that the potential for state or local governments "veto" by their "failure . . . to develop and/or implement an acceptable emergency plan . . . thereby blocking licensing and/or operation," is "inherent" in the rule; that the possibility was "specifically recognized"; that "other potential state and local 'vetos' already exist" such as building permits; and that it "could become a major problem in some future licensing cases."^{45/}

^{43/} 45 Fed. Reg. at 55,405. The NRC noted that such commenters had "felt that utilities, their customers, and their shareholders should not be penalized by a shutdown (with a resulting financial burden) because of alleged deficiencies or lack of cooperation by State and local officials." *Id.*

^{44/} *Id.* at 55,404 (emphasis added).

^{45/} See Transcript of Staff Presentation on Final Rulemaking on Emergency Preparedness Public Meeting (June 18, 1980) at 62, and Slide No. 9 in "Commission Briefing." The
(footnote continued)

At least three of the five persons who were Commissioners at the time the NRC adopted the 1980 emergency planning rule have publicly stated that they fully understood the potential for a state "veto." Former Commissioner Bradford, in a comment letter opposing the Commission's proposed rule, stated:

The statements to the effect that the Commission assumed in 1980 that all state and local governments would cooperate are absolutely wrong. . . . [C]oncerns were raised to the effect that a state might, by non-cooperation, render a plant unlicensable.

...

For my own part, I believe [then as now] that state governments would behave responsibly and that responsible behavior might include refusal to legitimize inadequate emergency response measures by participating in their preparation or in their practice.^{46/}

Former Commissioner John A. Ahearne testified:

[I] recognized that State and local governments could have a veto. But I also recognized that unless the form of government in the U.S. were to change, the veto possibility was a necessary condition for the use of nuclear power.^{47/}

Former Commissioner Victor Gilkinsey recently testified:

We were quite clear in 1980 about the consequences of relying on state and local governments for the necessary increase in emergency preparedness. It is all very well to talk about federal preemption, but there was, and is, no federal alternative in the

(footnote continued from previous page)

Commission's Advisory Committee on Reactor Safeguards similarly commented that the "veto" possibility "is inherent in the basic concept of the rule," but noted that "if it develops, adequate provisions to assure health and safety of [the] public must take precedence." *Id.* at Slide No. 15.

^{46/} Comments of former Commissioner Peter A. Bradford, April 2, 1987.

^{47/} Reauthorization of the Nuclear Regulatory Commission for Fiscal Years 1988 and 1989 and Nuclear Emergency Planning, Hearings before the Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works United States Senate, 100th Cong., 1st sess. 262 (1987).

neighborhoods of power reactors to the police powers of local and state governments. Without that active involvement emergency plans around nuclear plants were, and are, meaningless.

I don't think anyone looked forward to the possibility, but we realized these governments might not participate, and that the NRC could not force them to do so. In fact, one reason why offsite emergency preparedness had previously been handled on a voluntary basis was the fear that then-Governor Brown would use this issue to bar nuclear plant operation in California. After a close call at Three Mile Island, we decided such concerns could no longer be permitted to hold back needed public protection.^{48/}

Thus, while both the Congress and the Commission anticipated cooperation from most state and local governments with respect to emergency planning, they also clearly acknowledged the possibility that some state and local governments might decline to participate in the emergency planning process. Indeed, they specifically recognized that such non-participation could prevent a plant from being licensed to operate.

B. The NRC Subverts the Emergency Preparedness Rule

1. The NRC Substitutes a Presumption for Facts

On October 29, 1987, the NRC adopted a new emergency planning rule. Its stated purpose is:

to provide criteria for the evaluation at the operating license review stage of utility-prepared emergency plans in situations in which state and/or local governments decline to participate further in emergency planning.^{49/}

^{48/} Hearings before the Subcommittee on Energy and the Environment on Interior and Insular Affairs (Apr. 28, 1987), Testimony of Victor Gilinsky at 2-3.

^{49/} 52 Fed. Reg. 42,078 (1987).

The new rule permits the NRC to license a plant notwithstanding non-compliance with emergency planning requirements, if the non-compliance "is wholly or substantially the result of the non-participation of state and/or local governments."^{50/}

Under the new rule, the NRC intends to make the required public safety finding of "reasonable assurance that adequate protective measures can and will be taken" based solely upon a review of an emergency response plan prepared and exercised only by the utility and its personnel. The new rule proposes to make the required implementability finding -- that is, to determine both the adequacy of preparedness and the adequacy of the likely response itself -- by engaging in presumptions and hypotheses about what non-participating governments would do in the event of an actual emergency. Thus, the central feature of the new rule is the following provision:

In making its determination on the adequacy of a utility plan, the NRC will recognize the reality that in an actual emergency, state and local government officials will exercise their best efforts to protect the health and safety of the public. The NRC will determine the adequacy of that expected response, in combination with the utility's compensating measures, on a case-by-case basis, subject to the following guidance. In addressing the circumstance where applicant's inability to comply with the requirements of paragraph (b) of this section is wholly or substantially the result of non-participation of state and/or local governments, it may be presumed that in the event of an actual radiological emergency state and local officials would generally follow the utility plan. However, this presumption may be rebutted by, for example, a good faith and timely proffer of an adequate and feasible state and/or local radiological emergency plan that would in fact be relied upon as a radiological emergency.^{51/}

^{50/} Id. at 42,086.

^{51/} Id. (emphasis added).

The new rule also eliminates entirely the requirement of governmental participation in emergency plan exercises.^{52/}

The language of the new rule suggests that the use of the presumption is not mandatory, and that the presumption can be rebutted by the submission of evidence in "case-by-case adjudications."^{53/} But, the NRC has interpreted the rule to establish a de facto irrebuttable presumption: if state and local governments do not submit their own adequate plan, the NRC will presume conclusively that the governments will follow a utility's plan. This conclusive presumption applies even in the face of sworn statements, by the very government officials whose actions the rule is supposed to predict, which explain in detail why they would not follow a utility's plan in a "best efforts" response.

On February 25, 1988, the NRC's Licensing Board held that under the new rule, it "must presume" that a "best efforts" response by government officials "will follow the [utility] plan," and that that presumption "is rebuttable only by timely evidence that the [governments] would follow a different but adequate and feasible plan that could be relied upon."^{54/} The Board held, further, that in the adjudication of the adequacy of the utility plan "as supplemented by the best efforts response," "protestations that state and county officials would not use the [utility] plan" would not be accepted "in the absence of

^{52/} Id.

^{53/} Id.

^{54/} Transcript of Telephone Prehearing Conference (Feb. 25, 1988) in Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1) Docket No. 50-322-OL-3, at 19,283 (emphasis added). See attached Addendum to Brief of Petitioners. On February 29, 1988, Petitioners received a written order which confirms the Board's oral rulings. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) Confirmatory Memorandum and Order (Ruling on LILCO's Motions for Summary Disposition of Contentions 1, 2, 4, 5, 6, 7, 8 and 10 and Board Guidance on Issues for Litigation (Feb. 29, 1988). See attached Addendum to Brief of Petitioners.

[a] timely offer of another adequate plan which will be [used to] respond to the emergency."^{55/}

Thus, the NRC has interpreted its new rule as, in effect, establishing an irrebuttable presumption.^{56/} If governments do not submit their own adequate plans, the NRC will presume conclusively that those governments will follow a plan prepared by a utility, even if those governments have stated, and explained why, they would not follow that plan.

2. The NRC Fails to Permit Public Comment on the New Presumption

The evidentiary presumption which lies at the heart of the NRC's new rule -- that state and local governments will follow a utility's plan -- was not even in the proposed rule which the NRC published for comment on March 6, 1987.^{57/} Thus, although the proposed rule generated more comments than any NRC rule in history, none of the more

^{55/} Id. at 19,278-88. In the Shoreham proceeding, the NRC Licensing Board refused to accept sworn statements by New York Governor Mario Cuomo and Suffolk County Executive Patrick G. Halpin which explained in detail why those governments (1) have not and will not adopt a plan, and (2) would not follow the utility's plan, even in an emergency situation. As noted, both federal and state courts have held that the governmental determination not to adopt or implement a plan for Shoreham is rational and lawful. See n.1 above.

^{56/} The only "rebuttal" the NRC will accept is an act which, by definition, a non-participating government has already decided not to perform -- that is, the submittal of its own emergency response plan.

^{57/} The new rule as originally proposed would have permitted the NRC to license a plant notwithstanding non-compliance with the emergency planning requirements, if the non-compliance arose "substantially from a lack of participation in the development or implementation of offsite emergency planning by a State or local government," and if:

(1) the non-compliance could be remedied or compensated for by governmental cooperation; and

(2) the utility's offsite response plan included measures, to compensate for the lack of cooperation, "which are reasonable and achievable" and which "take into account a likely State or local response to an actual emergency." 52 Fed. Reg. 6,980, 6,981 (1987).

than 38,000 commenters were able to provide the NRC with views on the validity or impact of the evidentiary presumption which is the central feature of the rule ultimately adopted.^{58/}

Furthermore, the extensive comments on the proposed rule prompted the NRC Staff to recommend that the Commission clarify its proposal, to respond to "the widespread uncertainty as to the rule's intent."^{59/} The Staff's analysis and recommendations highlight the fundamental change in the approach of the final rule, as compared to the rule proposed for comment.

On October 13, 1987, the Staff recommended inclusion of the following language in the final rule:

In making its determination on the adequacy of a utility plan, the NRC will recognize the reality that in an actual emergency, state and local government officials will exercise their best efforts to protect the health and safety of the public, and will take account of the likely response of such officials, to be determined on a case-by-case basis.^{60/}

At the same time, the Staff provided for the Commission's review a draft Federal Register notice to accompany the final rule recommended by the Staff. In the draft, the Staff made clear that the rule as proposed and commented upon included no presumption about the nature of the expected "best efforts" government response. The Staff explained that its recommendation that the Commission recognize the so-called "best efforts" "reality":

^{58/} According to the Commission, 11,500 individual letters were sent to the NRC, 27,000 form letters were sent to Congress or the White House and forwarded to the NRC, and 16,300 persons signed petitions to the NRC. 52 Fed. Reg. at 42,079. In contrast, when the original emergency planning rule was adopted in 1980, the NRC received approximately 200 comment letters. 45 Fed. Reg. at 55,404.

^{59/} Memorandum to NRC Commissioners from William C. Parler, General Counsel, and Victor Stello, Executive Director for Operations, SECY-87-257 (Oct. 13, 1987) at 5.

^{60/} Id. at 33 (emphasis added).

makes no assumptions as to the precise actions which state and local governments would take (such as whether the state and local governments would follow the utility's plan), nor does it prejudice whether their responses would be sufficient to protect public health and safety adequately. Those issues are questions of fact to be resolved in individual adjudicatory proceedings.^{61/}

The Staff reiterated its understanding of the proposed rule in a formal briefing of the Commissioners on October 22, 1987:

[T]he rule makes no assumption as to precisely what [government] officials would do -- or how effective their effort will be; that would be left for evaluation in individual cases.^{62/}

The Staff told the Commission that the majority of the commenters on the proposed rule "viewed the rule as a major substantive change in the Commission's safety standards." The Staff stated, however, that with its recommended "clarifications," the rule "is considerably more modest in its purposes and its intended effect."^{63/} Clearly, therefore, as late as October 22, 1987, more than six months after the proposed rule was published for comment, even the NRC Staff had no inkling that the Commission's final rule would contain the presumption ultimately adopted.

Two days before the October 22 Commission briefing held to discuss the comments on the proposed rule, however, two members of Congress, Congressmen Ralph M. Hall and Charles Pashayan, Jr., had written to the NRC Chairman, complaining about the Staff's recommendations. They objected that the proposed rule, as interpreted by the Staff, (1) would require case-by-case adjudication, and (2) included no assumptions about the nature of the governments' response to an accident. The Congressmen recommended

^{61/} Id. at Attachment A at 21 (emphasis added).

^{62/} Transcript of NRC Briefing on Emergency Planning Rule (Oct. 22, 1987) at 23. See also id. at 36.

^{63/} Memorandum to NRC Commissioners from William C. Parler, General Counsel, and Victor Stello, Executive Director for Operations, SECY-87-257 (Oct. 13, 1987) at 3.

that the Commission adopt, instead, "a broad set of assumptions" that would insure favorable licensing decisions without requiring findings of fact about the nature or adequacy of a governmental "best efforts" response. The Congressmen stated:

[T]he staff is reluctant to engage in assumptions and to circumscribe adjudicatory hearings so as to make the rule workable. . . . The staff is prepared to assume that such officials will use their best efforts in the event of an accident. But such an assumption, confined as it is, leaves unanswered such questions as: Will the officials make use of the utility plan? Will the officials develop their own? Will they carry out either in an actual emergency? Exactly how will they do so?

...

[G]iven that licensing boards will have available to them only a utility plan . . . and an understanding that such officials will do their best ad hoc in an emergency, it will be difficult to make the finding that adequate protective measures can and will be taken. Even a hearing demonstrating that the utility plan is exceptionally strong may well not support such a finding.

...

[W]e feel that the Commission must provide itself a broad set of assumptions that will allow it to make a logical conclusion that adequate protective measures can and will be taken.^{64/}

Nine days later, without having solicited any comments on the Congressmen's new proposal or on the presumption ultimately adopted, the Commission promulgated its final rule.^{65/}

^{64/} Letter to Chairman Lando W. Zech, Jr. from Congressmen Ralph M. Hall and Charles Pashayan, Jr. (Oct. 20, 1987) at 2-3 (emphasis added).

^{65/} 52 Fed. Reg. 42,078 (1987). The Commissioners discussed the substance of the Congressmen's proposal at their October 22 briefing, which was open to the public. On October 27 and 28, the State of New York and Suffolk County informed the NRC that any NRC consideration of "the radically different actions" proposed by the Congressmen required a new opportunity for public comment. See Letters dated October 27 and October 28, 1987 to NRC Commissioners from Kirkpatrick & Lockhart. The NRC did not solicit any such comment.

3. The NRC Cannot Justify Its Weakening of the Emergency Preparedness Rule

On October 29 the NRC stated that the objective of the new rule was "to implement the policy underlying the 1980 Authorization Act,"^{66/} and "to give effect to" Congressional intent reflected in Section 109 of the 1980 Authorization Act so utilities would not be "penalized" by non-participation of state and local governments.^{67/} The March 6, 1987 notice of proposed rulemaking included no reference whatsoever to the 1980 Authorization Act.^{68/} Thus, the NRC deprived the public of an opportunity to comment on its stated basis for the rule change.

In announcing its new 1980 Authorization Act rationale in October, the NRC abandoned the bases announced for the rule when it was first proposed.^{69/}

In March 1987, the Commission sought to justify the rule change on two grounds: concern for the financial status of the utilities it regulates, and a purported change in circumstances. As for the financial concern, the NRC cited the "obvious serious finan-

^{66/} 52 Fed. Reg. at 42,086.

^{67/} *Id.* at 42,079. See generally discussion at 52 Fed. Reg. at 42,079-82; 42,084.

^{68/} See 52 Fed. Reg. at 6,980-84.

^{69/} Significantly, the Commission has never based the new rule on any post-1980 new scientific studies or data with respect to accident risks, or plant design or operations. 52 Fed. Reg. at 6,983. Nonetheless, the new rule plainly would provide a lesser margin of protection for the public's health and safety than the 1980 rule. The Commission itself asserted that "it would seem fairly indisputable that the adequacy of a plan with cooperation will be enhanced relative to a utility-sponsored plan without it." 52 Fed. Reg. at 6,983. Similarly, the NRC Staff's Memorandum which analyzed and recommended the proposed new rule to the Commission confirms that it would lower the standard of protection provided under the 1980 rule. See Memorandum to NRC Commissioners from William C. Parler, General Counsel and Victor Stello, Executive Director for Operations, SECY-87-35 (Feb. 6, 1987) at Attachment B "Regulatory Analysis" ("the adoption of the proposed amendments may result in a less coordinated offsite emergency plan as compared to sites where full coordination has been achieved") and Attachment C "Environmental Assessment" ("the public in the vicinity of the few affected plants would be placed at a somewhat greater risk relative to what would be the case if either the governments cooperated or the NRC adhered to its current emergency planning rules."). See also Commissioner Asselstine's dissent, discussed at page 27.

cial consequences to the utility, ratepayers and taxpayers" when a nuclear power plant is abandoned.^{70/} It admitted, however, that the "difficult question is whether or to what extent these non-safety consequences should be a matter of concern to the Commission in setting pre-licensing emergency planning requirements."^{71/} In adopting the final version of its new rule, the NRC abandoned this financial rationale with the terse assertion that "the NRC's motivation in promulgating this rule is not economics."^{72/}

The Commission had also justified the proposed new rule by claiming a "change in circumstances," "experienced since the regulations were promulgated in 1980, i.e., the phenomenon, not then expected, of State and local governments, refusing to cooperate in emergency planning."^{73/} In its March rule proposal, the Commission ignored that in 1980 and subsequently, both Congress and the Commission itself had acknowledged that some state and local governments might decline to adopt emergency plans; that this could prevent the licensing or operation of a nuclear plant; and that this would, in effect, constitute a state or local "veto" of a plant. In adopting the final rule, the Commission abandoned its "change in circumstance" rationale.^{74/}

Notwithstanding the Commission's claims that the 1980 Authorization Act justifies its rule change, the new rule violates, rather than implements, the most fundamental element of Congress' 1980 mandate to the NRC: that no plant may be licensed unless

^{70/} 52 Fed. Reg. at 6,981.

^{71/} Id. at 6,982. In fact, in Power Reactor Development Co. v. International Union of Electrical, Radio and Machine Workers, 367 U.S. 396, 415 (1961), the Commission itself assured the Supreme Court that it "is absolutely denied any authority to consider [the utility's financial investment] when acting upon an application for a license for operation." (Emphasis added.)

^{72/} 52 Fed. Reg. at 42,083.

^{73/} Id. at 6,983.

^{74/} See id. at 42,080.

there is a state, local or utility plan that can and will be implemented to assure the public health and safety.

Commissioner Asselstine dissented from the Commission's decision to propose the new rule, and filed a point-by-point refutation of the Commission's rationale.^{75/} With respect to the underlying philosophy, he stated that the proposal "is nothing more than the Commission's pre-1980 philosophy in new trappings."^{76/} With respect to the level of safety, he observed that the proposed rule "accept[s] a level of protection of the public health and safety which is lower than that afforded by the Commission's current regulations."^{77/} He explained as follows:

An ad hoc response by the responsible government officials is simply inconsistent with the fundamental precepts of emergency planning and clearly cannot provide the same level of protection as a plan with full cooperation would. An ad hoc response means that there will be no preplanning by the governments. Officials will be forced either to improvise during an accident (something which we know did not work at TMI) or to attempt to carry out a plan with which they are not familiar.^{78/}

II. SUMMARY OF ARGUMENT

The NRC has a heavy burden in justifying its rulemaking action. There is no basis for deferring to agency discretion in this case because the NRC has no expertise to justify the creation of its far-reaching presumption. The State and local governments, not the NRC, are the experts on what they will do in an emergency. Even among federal agencies, FEMA, not the NRC, has principal responsibility for emergency planning around

^{75/} 52 Fed. Reg. at 6,984-87.

^{76/} Id. at 6,986.

^{77/} Id. at 6,984.

^{78/} Id. at 6,986.

nuclear plants. FEMA has stated that the NRC's presumption has no basis in fact or in FEMA's experience.

The NRC's adoption of the new rule was arbitrary and capricious for three reasons. First, there is no record support -- much less substantial evidence -- for the presumption that State and local governments will follow a utility's plan in an actual emergency. The NRC's assertion that governments believe a planned response is better than an ad hoc response does not logically or factually support its conclusion that state and local governments will follow a utility's plan.

Second, the rulemaking was arbitrary and capricious because the NRC's explanation for the new rule -- that it implements the Congressional intent reflected in the 1980 NRC Authorization Act -- is demonstrably false. A rule that authorizes a license to be issued without even permitting the governments to demonstrate that they will not follow the utility's plan does violence to the Congressional intent. The NRC's other justifications for the new rule -- i.e., the alleged unfairness to utilities when state and local governments decline to participate in emergency planning and the alleged failure of the NRC to anticipate that some state and local governments would not participate in emergency planning -- are inadequate as a matter of law and were abandoned by the NRC between the time it proposed and the time it adopted the rule.

Third, the rulemaking was arbitrary and capricious because the NRC's rule is internally inconsistent. Section 50.47(a) of the NRC's emergency planning rule requires a finding of reasonable assurance that an adequate plan can and will be implemented. The Commission's new rule, however, effectively eliminates that requirement by barring inquiry into the potentially dispositive factual issue of whether a utility's plan will be implemented in an emergency.

In adopting the new emergency planning rule the NRC also violated the notice and comment requirements of the APA. The most important element of the new rule -- the

presumption about what governments would do in response to an emergency -- was not contained in the proposal that was noticed for comment. State and local governments charged with responsibility for protecting persons living around nuclear power plants, and the public that would be at risk in a nuclear accident, are entitled to comment on such a fundamental and controversial change in the NRC's emergency planning regulations.

III. ARGUMENT

A. Standards of Review

1. The Arbitrary and Capricious Standard

Agency actions must be set aside if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."^{79/} As this Court recently stated, in determining whether agency action is arbitrary and capricious "courts will look to see whether the agency has adequately explained the facts and policies upon which it relied. Reviewing courts also require that the facts relied upon have some supporting basis in the administrative record."^{80/} In other words, NRC rulemaking "accompanied by an inadequate explanation constitutes arbitrary and capricious conduct."^{81/} Further, the NRC "remains obliged to produce substantial evidence for its major assumptions in a rulemaking. . . ."^{82/}

^{79/} Administrative Procedure Act, 5 U.S.C. § 706.

^{80/} Natural Resources Defense Council, Inc. v. EPA, 824 F.2d 1258, 1267 (1st Cir. 1987) (citations omitted).

^{81/} Federal Election Commission v. Rose, 806 F.2d 1081, 1088 (D.C. Cir. 1986). See City of Brookings Municipal Telephone Co. v. FCC, 822 F.2d 1153, 1165 (D.C. Cir. 1987); North Germany Area Council v. FLRA, 805 F.2d 1044, 1050 (D.C. Cir. 1986); Celcom Communications Corp. v. FCC, 789 F.2d 67, 70-71 (D.C. Cir. 1986).

^{82/} NRDC v. Herrington, 768 F.2d 1355, 1359 (D.C. Cir. 1985). Accord American Maritime Ass'n v. United States, 766 F.2d 545, 566 n.30 (D.C. Cir. 1985); Eagle-Picher Industries, Inc. v. EPA, 759 F.2d 905, 921 (D.C. Cir. 1983); Telocator Network of
(footnote continued)

2. Courts Owe No Deference to the NRC When It Acts Outside Its Field of Expertise

In applying the arbitrary and capricious standard, courts give considerable deference to agencies, including the NRC, when they act within the scope of their expertise.^{83/} This Court, however, must take a particularly critical look at the NRC's new emergency planning rule for two reasons.

First, it is hornbook law that when an agency acts outside its field of expertise, it is not entitled to deference.^{84/} The NRC's expertise is in matters of nuclear safety and nuclear plant design and operation, not offsite emergency response or preparedness. Congress and the NRC have long acknowledged that state and local authorities, not the federal government, have the knowledge, experience and know-how, and are the true

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America v FCC, 691 F.2d 525, 545 (D.C. Cir. 1982); Sierra Club v. Costle, 657 F.2d 298, 334-35 (D.C. Cir. 1981).

^{83/} Nonetheless, even when agencies act within their expertise, careful review is required. As the Supreme Court has stated, unless "courts make the requirements for administrative action strict and demanding, expertise, the strength of modern government, can become a monster which rules with no practical limits on its discretion." Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 48-49 (1983) (emphasis in original), (quoting New York v. United States, 342 U.S. 882, 884 (1951) (Douglas, J., dissenting)); Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 167 (1962).

^{84/} NLRB v. Bildisco and Bildisco, 465 U.S. 513, 529 n.9 (1984) (rejecting as "novel" the contention that a court should defer to an agency's interpretation of statutes outside its expertise); Russell v. Law Enforcement Assistance Admin., 637 F.2d 1255, 1264 (9th Cir. 1980) ("[D]eference is not appropriate when the particular interpretation is outside the agency's expertise"); Local 777, Democratic Union Organizing Comm. v. NLRB, 603 F.2d 862, 869 n.17 (D.C. Cir. 1978) ("[W]here the issues involved are purely legal or otherwise outside the Board's particular expertise, the Board's interpretation is entitled to no particular deference"); Amchem Products, Inc. v. GAF Corp., 594 F.2d 470, 476 (5th Cir.), modified, 602 F.2d 724 (1979) (Traditional policy of deference to agency action "is inapplicable where the matter is not within the expertise of the agency"). See also FCC v. RCA Communications, 346 U.S. 86, 91 (1953) (holding that where FCC based its decision on its interpretation of national policy rather than on matters within its own special competence, the Court would not defer to the agency's decision).

"experts" on local emergency response issues.^{85/} Even at the federal level, it is FEMA, not the NRC, that has the primary responsibility and experience with respect to offsite emergency planning and response.^{86/} As discussed below, FEMA does not have any data that support the NRC's presumption.

More importantly, the presumption at issue in the new rule does not really address, or call for expertise concerning, technical matters of emergency planning; rather, it makes hypotheses, predictions, and assumptions about what state and local government officials would do in an emergency in the absence of any government plan or preparedness. The NRC has no expertise on that subject, and the expertise it does have provides no basis for predicting or presuming how sovereign governmental officials would or could choose to act in an emergency.^{87/}

Second, when an agency changes a settled rule, the burden is on the agency to justify the change.^{88/} Here, the NRC has fundamentally altered the emergency planning requirements that have been in place since 1980. The Commission has a heavy burden of

^{85/} See, e.g., Emergency Planning Around U.S. Nuclear Powerplants: Nuclear Regulatory Commission Oversight Hearings Before a Subcommittee of the Committee on Government Operations of the House of Representatives, 96th Cong., 1st Sess. 380, 535 (1979) (testimony of NRC Chairman Hendrie); 125 Cong. Rec. S. 9471-78 (1979); Citizens for an Orderly Energy Policy v. Suffolk County, 604 F. Supp. 1084, 1095 (E.D.N.Y. 1985).

^{86/} On December 7, 1979 the President, in response to the recommendations of the Kemeny Commission, directed that FEMA assume lead responsibility for all offsite radiological emergency planning and response. FEMA's responsibilities are set forth at 44 CFR § 350. See also "Memorandum of Understanding Between Federal Emergency Management Agency and Nuclear Regulatory Commission," 45 Fed. Reg. 82,713 (1980), superseded at 50 Fed. Reg. 15,485 (1985).

^{87/} See Guard v. NRC, 753 F.2d 1144, 1149-50 (D.C. Cir. 1985) (not within NRC's core of expertise to make assumptions about whether adequate facilities will be available to serve radiation victims in event of accident).

^{88/} Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co., 463 U.S. 29, 41 (1983). See Atchison Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade, 412 U.S. 800, 807-08 (1973); Dalton v. United States, 816 F.2d 971, 974 (4th Cir. 1987); Center for Science in the Public Interest v. Dept of Treasury, 797 F.2d 995, 999 (D.C. Cir. 1986); NRDC v. EPA, 790 F.2d 289, 298 (3d Cir. 1986); Robbins v. Regan, 780 F.2d 37, 49 (D.C. Cir. 1985); St. James Hosp. v. Heckler, 760 F.2d 1460, 1472 (7th Cir. 1985); Center for Auto Safety v. Peck, 751 F.2d 1336, 1349 (D.C. Cir. 1985).

justifying why it is now appropriate to eliminate safety requirements previously considered essential to protecting the health and safety of persons living near nuclear power plants.

B. The NRC's Rulemaking Was Arbitrary and Capricious

The new rule is arbitrary and capricious because the administrative record does not support it, the NRC's explanation for the rule is demonstrably false and inadequate, and the rule is internally inconsistent.

1. The Administrative Record Does Not Support the New Rule

The NRC's only attempt to provide a basis for its presumption is the following assertion in the release announcing the new rule:

This rule leaves it to the Licensing Board to judge what form the "best efforts" of state and local officials would take. However, the rulemaking record strongly supports the proposition that state and local governments believe that a planned response is preferable to an ad hoc one. Therefore, it is only reasonable to suppose that in the event of a radiological emergency, state and local officials, in the absence of a state or local radiological emergency plan approved by state and local governments, will either look to the utility and its plan for guidance or will follow some other plan that exists. Thus the presiding Licensing Board may presume that state and local governmental authorities will look to the utility for guidance and generally follow its plan in an actual emergency; however, this presumption may be rebutted by, for example, a good faith and a timely proffer of an adequate and feasible state or local radiological response plan which would in fact be relied upon in an emergency.^{89/}

The administrative record does not support the Commission's presumption for five reasons. First, as a matter of logic, it does not follow that because state and local government officials may subscribe to the truism that a planned response is better than an ad hoc one, they would decide in an emergency to follow a plan prepared by a utility,

^{89/} 52 Fed. Reg. at 42,082.

which the government officials have not reviewed, adopted, or been trained or prepared to implement.

Second, the NRC does not have the expertise to predict what state and local governments will do in an emergency. Thus, its presumption that state and local governments will follow a utility's plan that they have stated they will not follow is not entitled to any weight. Guard v. NRC, 753 F.2d 1144 (D.C. Cir. 1985) is directly on point.

In Guard, petitioners challenged the NRC's decision that emergency planning requirements on the treatment of persons exposed to dangerous levels of radiation (10 CFR § 50.47(b)(12)) could be satisfied merely by identifying treatment facilities in the area. In vacating the NRC's decision as inconsistent with the Commission's own emergency planning requirements, the Court stated:

The underlying assumption made by the Commission -- that wherever present or future nuclear power plants may be located, adequate facilities will be available in the area to serve victims of radiation exposure in the event of an accident -- is hardly within the core of the Commission's expertise. In any case, it is not an assumption properly indulged in an emergency preparedness regulation.^{90/}

Here too, the Commission's underlying assumption -- that state and local governments will follow a utility's plan, no matter how firmly they may declare that they will not follow that plan -- is beyond the Commission's expertise.

Third, contrary to the NRC's assertion that "the rulemaking record strongly supports" the presumption, that record cannot even be fairly characterized as addressing the presumption. Since the Commission chose not to give advance notice of its intention to include the presumption in the new rule (see Section III.C below), commenters had no basis or reason for commenting upon the presumption's validity or lack thereof.^{91/}

^{90/} 753 F.2d at 1149-50.

^{91/} Moreover, as late as October 22, even the NRC's Staff understood the proposed
(footnote continued)

Fourth, FEMA -- the agency relied upon by the NRC for its expertise in offsite emergency response matters -- informed the NRC prior to the adoption of the new rule that there is no basis in fact or in FEMA's experience to permit predictions on whether state and local governments will follow a utility plan in an emergency:

The belief expressed by the NRC that State and local governments which have not been involved in emergency planning would nonetheless respond to an actual emergency and follow a comprehensive utility plan is open to question. FEMA has no data that would indicate what State and local government reactions might be in such circumstances.^{92/}

In adopting the final rule, the NRC itself acknowledged "FEMA's declared reluctance to make judgments on emergency planning in cases of state and local non-participation . . . because of the degree of conjecture that would in FEMA's view be called for . . ." ^{93/}

Fifth, prior to adoption of the new rule, there was only one case that had advanced to the stage where evidence was available on the question of whether state and local governments would use a utility's plan. In that case, the Commission's own Licensing Board had found that there was no factual basis to conclude that state and local governments would carry out a utility's plan. Specifically, in the Shoreham licensing proceeding, the utility, LILCO, had argued since 1983 that the State of New

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rule as containing no presumption about what governments would do in a "best efforts" response. See Section I.B above.

^{92/} Comment letter to Samuel J. Chilk, Secretary, NRC, from Dave McLoughlin, FEMA Deputy Associate Director, State and Local Programs and Support (Apr. 28, 1987) at 4 (emphasis added). In addition, in response to an NRC request that FEMA adopt, among others, the presumption that non-participating governments would "follow the utility plan" in evaluating utility plans for NRC licensing purposes, FEMA stated that since the presumption "originate[d] with the NRC," and is not "based on . . . specific verified facts," FEMA would not defend the presumption in any court proceedings or in any legal or public forum. Letter to Victor Stello, Executive Director for Operations, NRC, from David McLoughlin, FEMA (Oct. 28, 1987).

^{93/} 52 Fed. Reg. at 42,082. In its final rule the NRC does not explain why it is in a better position than FEMA to reach conclusive findings on matters which FEMA has found open to question.

York and Suffolk County would, in a real emergency, implement the utility's plan for an offsite response to a Shoreham accident. The State and County, however, had provided detailed reasons and evidence, citing local conditions and realities with which they are intimately familiar, to support their belief that the utility's plan was inadequate, unworkable, and misguided in many respects. They also had submitted sworn affidavits of Governor Cuomo, the Suffolk County Executive, and other State and County officials, detailing why the Governments would not and could not follow, use, or act in accordance with that utility plan.

In rejecting the utility's argument that in a real emergency the State and County would respond in a way consistent with the utility's proposed plan, the Licensing Board stated:

On the basis of the probative evidence of record, it is clear that any government response that can be anticipated will be on an uncooperative, uncoordinated, ad hoc basis considering the State's and County's opposition to the LILCO Plan and their deliberate unwillingness to participate in it. . . . There is nothing on which to base a finding that there will be a cooperative, coordinated effort between the government and the utility to prepare for and implement the existing emergency response plan.

. . .

The State and County affirmatively oppose participating in the LILCO Plan. We cannot base a judgment on the adequacy of the Plan on conjecture, as [the utility] would have us do.^{94/}

^{94/} Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-12, 21 NRC 644, 912 (1985). The NRC Appeal Board affirmed that ruling. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-818, 22 NRC 651, 675-76 (1985). The Commission reversed, but remanded for hearing on the outstanding questions of fact concerning the nature and adequacy under the NRC's regulations of a "best efforts" government response. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-86-13, 24 NRC 22 (1986).

And, more recently, the NRC's Licensing Board held that given the evidentiary record before it in the Shoreham case, it could not assume that the state and local governments would follow the utility's plan:

[We] took into account the evidentiary record in which the Governments stated that they would not implement the [utility's] plan, would not respond to a Shoreham emergency in concert or in partnership with [the utility], would not rely upon [utility] recommendations or advice, and would not authorize [the utility] to perform [the emergency response police power functions at issue]. Considering the best efforts assumptions and the foregoing led the Board to the conclusion that it remained an open question how the Governments would respond in an emergency.^{95/}

In sum, the NRC has completely failed to satisfy its "oblig[ation] to produce substantial evidence for its major assumptions in a rulemaking."^{96/} The Commission's presumption is outside its expertise and is not supported by any facts or data, in the record or elsewhere. The NRC's own expert "advisor" on emergency planning, FEMA, has told the NRC that the presumption has no basis. And the only pertinent facts known to the Commission about how non-participating governments would respond in an actual emergency -- those in the evidentiary record in the Shoreham case -- directly contradict the presumption. For these reasons, the Commission's action in adopting the new rule was arbitrary and capricious.

2. The NRC's Explanation of the New Rule Is Inadequate

In the release announcing the final rule, the Commission abandoned the bases for

^{95/} Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-87-29, No. 50-322-OL-3, slip op. at 14 (Oct. 29, 1987) (emphasis added). This Order followed a September 17, 1987 Order in the Shoreham proceeding in which the Licensing Board had ruled that there was sufficient "convincing direct evidence" which precluded a finding that the State and local governments would follow the utility's plan. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-87-26, 26 NRC 201, 216 (1987).

^{96/} See cases collected at footnote 82.

the rule change announced in its rulemaking proposal.^{97/} Instead, the NRC relied exclusively on the 1980 Authorization Act Conference Report language that the conferees "sought to avoid penalizing [a license] applicant . . . if a State or locality does not submit an emergency response plan to the NRC."^{98/} Relying on this new basis to justify the new rule, the Commission asserted that the final rule "is consistent with" and "give[s] effect to" Congressional intent reflected in the 1980 Authorization Act.^{99/}

Petitioners discuss the legislative history of the 1980 Authorization Act in Section I.A.2 above. This history demonstrates that the NRC's justification does not withstand analysis.

^{97/} As discussed above, the Commission originally offered two different explanations to support the proposed rule: first, that considerations of economic fairness to the utility justified the rule change, 52 Fed. Reg. at 6,982; and second, that the Commission had not anticipated in 1980 that some state and local governments might not participate in emergency planning. *Id.* at 6,983.

It had to abandon both explanations in the final rule. With respect to the fairness/economic argument, the Court of Appeals for the D.C. Circuit held that in setting or enforcing the standard of "adequate protection" the Commission "may not consider the economic costs of safety measures" and instead must determine "regardless of costs, the precautionary measures necessary to provide adequate protection to the public." *Union of Concerned Scientists v. NRC*, 824 F.2d 108, 114 (D.C. Cir. 1987). See also *Power Reactor Development Co. v. International Union of Electric Radio and Machine Workers*, 367 U.S. 396, 415 (1961) (Commission could not consider the applicant's previous capital investment in deciding whether the operation of the plant would satisfy the adequate protection standard); *Seacoast Anti-Pollution League v. NRC*, 690 F.2d 1025, 1033 (D.C. Cir. 1982) (the Commission "does not and cannot consider the utility's [prior] investment in a particular facility" in determining whether "reasonable assurance" exists).

With respect to the "unanticipated non-participation" argument, the Commission could not escape the fact that the Commission's own release adopting the 1980 emergency planning rules explicitly "recognize[d] there is a possibility that the operation of some reactors may be affected by this rule through inaction of State and local governments or an inability to comply with these rules." 45 Fed. Reg. at 55,404.

^{98/} 52 Fed. Reg. 42,079. Petitioners note that the 1980 Authorization Act was not so much as mentioned, much less relied upon, when the NRC announced the proposed rule on March 6, 1987.

^{99/} See discussion at 52 Fed. Reg. at 42,079-81.

Following TMI, Congress insisted that nuclear plants not be licensed to operate absent site-specific factual findings that adequate preparedness and implementable plans exist to protect the public. Congress firmly rejected the continued reliance upon well-intentioned but ad hoc emergency responses by requiring that any plan relied on for licensing -- be it a State, local or utility plan -- meet the implementability standard of "reasonable assurance that the public health and safety can and will be protected."^{100/}

Moreover, as shown by the debate on and defeat of the Johnston amendment, the Conference resolution of the conflicting House and Senate bills, and the NRC's own contemporaneous discussion of the potential state "veto" issue, Congress acted with full knowledge that some states and local governments might decline to participate in emergency planning and that their non-participation could prevent a plant from being licensed to operate.^{101/} It recognized that emergency planning is primarily a matter of state and local government responsibility and expertise, that practical considerations and the most basic principles of federalism argue against any attempt to compel state and local governments to submit emergency plans, and that while the NRC should be able to consider a utility's plan, there is no assurance that a utility plan alone can meet safety requirements.

Contrary to the NRC's claimed reliance on the 1980 legislative history, the new emergency planning rule is light years away from the Congressional intent reflected in that history. Under the new rule, the critical requirement of an adequate detailed plan

^{100/} See Section I.A.2 above.

^{101/} As stated by Judge Altimari, "Congress was well aware of the possibility that local governments might refuse to cooperate in furnishing [an emergency plan]" and nevertheless "did not . . . adopt an amendment to require local government participation." Citizens for an Orderly Energy Policy v. Suffolk County, 604 F. Supp. 1084, 1095 (E.D.N.Y. 1985). Presumably, Congress was motivated "at least partly by a reluctance to create 'a fundamental shift in the federal system . . . [that] would give some authority to the Federal Government which has never before been obtained by the Federal Government in this area.'" Id. (quoting 125 Cong. Rec. S. 9476 daily ed.) July 16, 1979).

that can and will be implemented is deemed satisfied by an ad hoc hypothesized response by governments which have not prepared, adopted, endorsed, or agreed to implement a plan. With respect to the "presumed" government response, the new rule further eliminates the Congressionally required assurance of response implementability, by dropping entirely the requirement of pre-licensing exercises and drills that demonstrate knowledge, capabilities and coordination. The NRC's presumption assumes away the fundamental factual issue Congress identified as central to licensing: what will actually be done in an emergency to protect the persons living around a nuclear plant, and will it be adequate? It presumes that state and local governments will do whatever a utility's plan says they will do, even if those governments have rejected that plan as unworkable. It prevents the introduction of evidence to show that the governments will not implement the plan on which the license is to be based. And, the presumption is effectively irrebuttable by governments that have determined not to adopt or submit an emergency plan.^{102/}

Stripped of its rhetoric, the rule in fact seeks to accomplish by presumption that which Congress expressly refused to allow in 1980. Congress refused to allow the NRC to issue a license based on a plan prepared by the NRC for non-participatory governments, and it refused to require state and local governments to adopt their own plans for nuclear plants.^{103/} The new rule, however, effects an even more pernicious intrusion on State prerogatives than that contemplated -- but rejected -- by Congress: the NRC would license a plant based on an emergency plan prepared by a utility. The new rule, in effect, attempts to require states to adopt a utility's plan.

^{102/} See Transcript of Prehearing Conference (Feb. 25, 1988) in Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL-3 at 19,283, 19,288.

^{103/} See Section I.A.2 above.

In sum, the 1980 Authorization Act and the Conference Report do not support the NRC's presumption. There is no evidence that Congress intended that licenses could be issued, or safety findings made, based on the mere existence of a utility's plan and the presumed, hypothesized actions of government officials, to be improvised at the time of an emergency. The self-imposed stricture of the rule -- that the NRC will not consider evidence that the governments will not implement the plan upon which the license is to be based -- flies in the face of Congress' pronouncements in 1980. Because the Commission's explanation for the rule is inadequate, the Court should vacate the rule as arbitrary and capricious.^{104/}

3. The New Rule Is Internally Inconsistent

The Court must vacate the new rule for a third reason: the rule is internally inconsistent. The best illustration of this principle is found in Guard v. NRC, 753 F.2d 1144 (D.C. Cir. 1985).

Guard involved a challenge to the Commission's decision that 10 CFR § 50.47(b)(12), which requires that emergency plans include "[a]rrangements . . . for medical services for contaminated injured individuals," could be satisfied by a simple identification of whatever facilities happen to exist. The D.C. Circuit vacated the NRC's decision on the ground that the decision was inconsistent with the requirement of § 50.47(b)(12). It held that the Commission's decision to allow medical services to be arranged "entirely ad hoc after the onset of an emergency" was fundamentally inconsistent with the § 50.47(b)(12) requirement that adequate planning exist before an operating license is issued. The Court stated,

A provision calling for pre-event arrangements is not sensibly met by post-event prescriptions.

^{104/} See cases cited at footnote 81.

...

It appears, in sum, that the NRC, with one hand, has placed section 50.47(b)'s cover over individuals exposed to dangerous levels of radiation but, with the other hand, has removed the cover.^{105/}

Here, Section 50.47(a)(1) requires as a condition for the issuance of a license that the NRC find "that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." (Emphasis added.) The Commission states repeatedly in its discussion of the new rule that this requirement remains in full force.^{106/} At the same time, however, the NRC establishes a presumption that is fundamentally inconsistent with the requirement that there be a

^{105/} 753 F.2d at 1149, 1150.

^{106/} In its release adopting the final rule the Commission stated: "[the Commission] is on record as believing that the evaluation of a utility plan takes place in the context of the overriding obligation that no license can be issued unless the emergency plan is found to provide reasonable assurance of adequate protective measures in an emergency," 52 Fed. Reg. at 42,080; "the rule provides for no diminution of public protection from what was provided under existing regulations," *id.* at 42,081; "a utility plan, to pass muster, is required to provide reasonable assurance that adequate protective measures can and will be taken in an emergency," *id.* at 42,082; "the Commission must make both a finding of 'adequate protective measures . . . in an emergency' and an overall safety finding of 'reasonable assurance that the health and safety of the public will not be endangered'. . . . The rule does nothing to alter either the requirement that emergency planning must be found adequate or the place of emergency planning in the overall safety finding." *Id.* at 42,083.

Similarly, in the release proposing the rule for adoption, the Commission stated:

Any consideration of possible changes in the Commission's emergency planning requirements must recognize one central and salient fact: That such a change would not alter the Commission's paramount obligation to assure public health and safety. For each license application, the Commission would remain obligated to determine that there is reasonable assurance that the public health and safety will be adequately protected. If the Commission, for whatever reason, cannot find that the statutory standard has been met, then the license cannot be issued.

52 Fed. Reg. at 6,981.

finding of plan implementability, and it eliminates altogether the exercise requirement which permits the implementability finding to be made.

First, the presumption assumes away the facts that could potentially lead to the conclusion that there is no reasonable assurance that a utility's plan will be implemented. The presumption prohibits the submission of evidence on what the governments would do to respond to an emergency unless that response is to implement an adequate and feasible plan which, by definition, would provide the necessary "reasonable assurance." Clearly, notwithstanding the NRC's protestations, the presumption provision of the rule makes a mockery of the reasonable assurance of implementability finding.^{107/}

Second, the new rule eliminates, for the presumed government responders, the requirement that they participate in pre-licensing exercises.^{108/} This provision undercuts even further the NRC's lip service to the reasonable assurance of implementability finding. The NRC's regulations require exercises "to evaluate major portions of emergency response capabilities," "to develop and maintain key skills," and "to ensure that emergency organization personnel are familiar with their duties."^{109/} Since non-participating government personnel, whom the NRC presumes will follow a utility's plan, are not required to participate in exercises, under the new rule the NRC will have no basis to evaluate their capabilities or to find assurance that they can and will implement the utility's plan.

^{107/} The circular nature of the new rule and its fundamental inconsistency with the reasonable assurance requirement is spelled out in the October 20, 1987 letter from Congressmen Ralph M. Hall and Charles Pashayan, Jr., which led to the adoption of the presumption. See Section I.B. above. The Congressmen advocated the presumption because where state and local governments decline to participate in emergency planning, "it will be difficult to make the finding that adequate protective measures can and will be taken," as required by 10 CFR. § 50.47(a).

^{108/} 52 Fed. Reg. at 42,086.

^{109/} 10 CFR § 50.47(b)(14), Part 50, App. E, § IV.E.

C. The NRC's Rulemaking Violated Notice and Comment Requirements

In adopting its new rule, the NRC was required to comply with the notice and comment provisions of the Administrative Procedure Act.^{110/} The notice and comment requirements are designed to "ensure meaningful public participation in agency proceedings,"^{111/} "allow the agency to benefit from the expertise and input of the parties who file comments . . . and to see to it that the agency maintains a flexible and open-minded attitude toward its own rules,"^{112/} promote "an essential component of fairness to affected parties,"^{113/} and "by giving affected parties an opportunity to develop evidence in the record to support their objections to a rule, . . . [to] enhance[] the quality of judicial review."^{114/}

In this Circuit, the standard for determining whether a new opportunity for comment is required when an agency adopts a final rule different from the rule that was proposed, is:

whether the commenters have had a fair opportunity to present their views on the contents of the final plan. We must be satisfied, in other words, that given a new opportunity to comment, commenters would not have their first occasion to offer new and different criticisms which the Agency might find convincing.^{115/}

^{110/} 5 U.S.C. § 553. The Commission's own Staff had warned that introduction of new standards after the notice period could require "a new round of proposed rulemaking." Memorandum to NRC Commissioners from William C. Parler, General Counsel and Victor Stello, Executive Director for Operations, SECY-87-257 (Oct. 13, 1987) at 5.

^{111/} BASF Wyandotte Corp. v. Costle, 598 F.2d 637, 642 (1st Cir. 1979), cert. denied, 444 U.S. 1096 (1980).

^{112/} National Tour Brokers Ass'n. v. United States, 591 F.2d 896, 902 (D.C. Cir. 1978).

^{113/} Small Refiner Lead Phase-Down Task Force v. EPA, 705 F.2d 506, 547 (D.C. Cir. 1983) (quoting Nat'l Ass'n of Home Health Agencies v. Schweiker, 690 F.2d 932, 949 (D.C. Cir. 1982)).

^{114/} Id. at 547.

^{115/} Natural Resources Defense Council, Inc. v. EPA, 824 F.2d 1258, 1284 (1st Cir. (footnote continued)

In the Natural Resources Defense Council case, this Court struck down on notice grounds high level waste ("HLW") rules about ground water protection requirements. In language that is directly applicable to this case, the Court stated:

It seems significant that the majority of the complaints presented to this court concerning the HLW rules related to the ground water protection requirements. . . . Because the public never saw this provision until the final rule was promulgated, it is not surprising that the petitioners are now raising so many challenges to this provision since this court provides the first and only forum that they have had in which to express their concerns. Had the EPA opened a new comment period when they promulgated this never before proposed or foreshadowed rule, a significant number of the complaints that are before us now could have been resolved by the Agency . . . 116/

Here, the NRC introduced a new and potentially dispositive presumption between the time that comments were solicited and the time that the final rule was adopted. As of October 22, even the NRC Staff still believed that the proposed new rule included no presumption about the nature of a "best efforts" response. Seven days later, however, the NRC fundamentally changed the proposed rule by including the new presumption.

Moreover, the eleventh-hour presumption is of fundamental significance: it is potentially decisive in licensing decisions; it strikes at the very heart of the federal-state relationship with respect to emergency planning; it assumes without evidence that sovereign governments will act in emergencies in accordance with utility prescriptions; and, as interpreted by the NRC, it prevents non-participating governments from submitting evidence to demonstrate that the governments will not implement the utility's plan.

(footnote continued from previous page)
1987) (quoting BASF Wayndotte Corp., 598 F.2d at 642). See generally New England Power Co. v. NRC, 683 F.2d 12 (1st Cir. 1982); Kollett v. Harris, 619 F.2d 134 (1st Cir. 1980).

116/ 824 F.2d at 1285-86.

In an area as important to the public health and safety as emergency preparedness, the governments that are responsible for protecting the population around nuclear power plants and those citizens who would be affected by an accident at such plants, were entitled to an opportunity to comment on the fundamental and controversial rule change embodied in the NRC's final rule. The NRC's failure to include the presumption in a proposal for comment converts the APA's notice requirements into an "empty charade" and transforms "what should be a genuine interchange [into a] mere bureaucratic sport."^{117/}

IV. CONCLUSION

The NRC's new rule should be vacated. The rule is outside the Commission's expertise, has no support in the record, is directly contradicted by the very legislative history on which the NRC purports to rely, and is fundamentally inconsistent with the NRC's own requirement of reasonable assurance that an emergency plan "will be" implemented. Further, the new rule was adopted without adequate public notice. Though the NRC claims that the rule is faithful to safety requirements that both Congress and the NRC embraced in response to TMI, the very terms and effect of the rule belie that claim. In fact, the new rule is a transparent effort to tilt the scales in favor of licensing a nuclear plant at the expense of public safety.

^{117/} Connecticut Light & Power Co. v. NRC, 677 F.2d 525, 530 (D.C. Cir. 1982).

Respectfully submitted,

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