



## RULEMAKING ISSUE

February 6, 1987

(Notation Vote)

SECY-87-35

For: The Commissioners

From: William C. Parler  
General Counsel

Victor Stello, Jr.  
Executive Director for Operations

Subject: CONSIDERATION OF EMERGENCY PLANNING RULE CHANGES  
TO DEAL WITH LACK OF GOVERNMENTAL COOPERATION IN  
OFFSITE EMERGENCY PLANNING

Discussion: Attached (Enclosure A) is a draft proposed rule change  
which would, in limited circumstances, allow full power  
nuclear plant operation to begin when there is a lack  
of State or local government cooperation in offsite  
emergency planning. The heart of the proposal is the  
following:

The Commission may issue a full-power operating license for a facility notwithstanding non-compliance with other [NRC emergency planning] requirements ... 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 all effective measures to compensate

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G PDR

for the lack of cooperation which are reasonable and feasible under the circumstances and which take into account a possible 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.

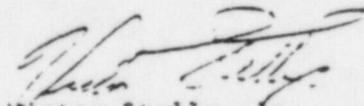
The draft notice is self-explanatory, but several things bear special emphasis:

1. The rule change would have a minimal impact on safety.
2. The rule change is based on regulatory policy considerations about the proper role of emergency planning in NRC safety licensing, rather than new scientific safety data relevant to plant risk or emergency planning risk reductions.
3. The rulemaking poses the important safety policy issue whether reasonable assurance that adequate protective measures will be taken in the event of an accident is always an essential part of the statutory finding that full power licensing will not be inimical to the public health and safety.
4. The rule approach in this paper represents a minimum change to the regulations focused narrowly on the problem of non-cooperation.
5. FEMA's views regarding the proposal will be formally requested during the comment period on the proposed rule. FEMA has been informally consulted during the preparation of this notice.

This paper and rulemaking were drafted by OGC. OGC sees no legal obstacle to the proposed rule, but would defer to others on the policy questions involved. The EDO recognizes that the proposal will be highly controversial but nevertheless endorses the proposal from a policy standpoint.

- Recommendations:
1. Approve publication of the notice of proposed rulemaking.
  2. Consider this paper at an open Commission meeting.
  3. Note:
    - a. The Subcommittee on Energy and the Environment of the House Interior and Insular Affairs Committee, the Subcommittee on Nuclear Regulation of the Senate Committee on the Environment and Public Works, the Subcommittee on Energy, Nuclear Proliferation and Federal Services of the Senate Committee on Government Affairs, and the Subcommittee on Energy and Power of the House Interstate and Foreign Commerce Committee will be informed by a letter similar to Enclosure B as soon as this paper is scheduled for a Commission meeting. They will also be informed if the Commission agrees to publish the proposal in the Federal Register.
    - b. If approved, this notice of proposed rulemaking would be published in the Federal Register allowing 60 days for public comment.
    - c. A draft public announcement similar to Enclosure C will be issued by the Office of Public Affairs.
    - d. In light of Commissioner Asselstine's offer of the proposed rule to Congress, we recommend that this paper be provided to Congress and also placed in the PDR.

  
William C. Parler  
General Counsel 2/6/87

  
Victor Stello, Jr.  
Executive Director for Operations

Enclosures:

- A. FR Notice of Proposed Rulemaking
- B. Regulatory Analysis
- C. Environmental Assessment

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Friday, February 20, 1987.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Friday, February 13, 1987, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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Attachment A

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.

DATES: Comment period expires (60 days from the date of issuance of the proposed rule). 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, D.C. 20555, ATTN: Docketing and Service Branch.

Deliver comments to: Room 1121, 1717 H Street, N.W., Washington, D.C., between 8:15 a.m. and 5:00 p.m. weekdays. Examine comments received at: NRC Public Document Room, 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: William M. Shields, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. Telephone: (301) 492-8693.

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 government 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 a 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 operating 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 if 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 measures 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, specifically 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, 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.

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 of 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 the existing regulations do 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 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.

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 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 lead 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 pronouncements 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 (1983). The existing emergency planning regulation 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 achievable 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 public in the 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 to 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.\* The option would be based on the consideration of what should be the appropriate underlying philosophy or approach to emergency planning as a prelicensing regulatory requirement -- a consideration which is prompted by the change in circumstances which have been experienced since the regulations were promulgated in 1980 -- the phenomena 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 had 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.

\*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.

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 1986, 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.

#### 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 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, N.W., Washington, D.C.

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, D.C.

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. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 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, 88 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. 5851). 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. 2133, 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 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), §§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. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§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. In 10 CFR Part 50, a new subsection (e) is added to Section 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 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 10 CFR Part 50, Appendix E, a new subsection 6 is added to Section F to read as follows:

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.

Dated at Washington, D.C., this            day of February, 1937.

For the Nuclear Regulatory Commission

Samuel J. Chilk  
Secretary of the Commission

Attachment B

REGULATORY ANALYSIS -- AMENDMENTS OF  
EMERGENCY PLANNING RULES TO DEAL WITH  
LACK OF COOPERATION BY OFFSITE AUTHORITIES

Statement of the Problem

In August of 1980, the Commission published revised emergency planning regulations which required, inter alia, that emergency plans be developed by licensees in cooperation with State and local governments. Although the Commission acknowledged the possibility that some governments might not cooperate, the Commission premised the new rules on a coordinated effort among all parties.

This coordination has proved impossible to achieve in a few isolated cases. The present rulemaking is intended to cover those cases not contemplated by the 1980 amendments.

Objective

The objective of the proposed amendments is to resolve, for future licensing, what offsite emergency planning approach should be adopted by the Commission where State or local governments decline to cooperate in offsite emergency planning or preparedness.

Alternative

The alternative considered was to leave the existing rules intact. The pros and cons of this alternative, and of the proposed rule, are discussed in the proposed rule preamble published in the Federal Register.

Consequences

NRC

The amendments will probably not impact on NRC resources currently being used in licensing cases. There could be extensive litigation and review regarding whether the proposed rule's criteria are met but this would likely only substitute for review and litigation under current rules.

Other Government Agencies

No impact on other agency resources should result. The same considerations applicable to NRC resources apply here as well.

### Industry

A positive financial effect might be earlier operation of nuclear power plants already completed but currently non-operational due to governmental non-cooperation. This earlier operation should compensate for whatever expenses a utility might incur to comply with the rule. In any event, the rule only offers utilities an option.

### Public

At affected sites, 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.

### 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 Commission's 1980 regulations were premised upon a cooperative effort among State and local governments and the licensee. Attempts to license already-constructed facilities under these regulations in the face of non-cooperation by offsite authorities have resulted in protracted administrative litigation and non-operation of facilities which otherwise meet all of the Commission's safety requirements. A new approach should be considered to reduce such litigation and to obtain the highest possible level of emergency planning given the non-cooperation of offsite authorities.

### Implementation

The proposed rule will be published for 60 days comment. The Commission will then consider all comments and publish a final rule on an expedited schedule. Because the rule would lessen requirements in affected cases, it could be made effective upon publication. See 5 U.S.C. 553(d)(1).

Attachment C

ENVIRONMENTAL ASSESSMENT FOR PROPOSED AMENDMENTS  
TO EMERGENCY PLANNING REGULATIONS TO DEAL  
WITH NON-COOPERATION BY OFFSITE AUTHORITIES

Identification of the Proposed Action

The Commission is considering amending its regulations regarding offsite emergency planning at nuclear power plants to provide alternative licensing criteria when State and/or local governments decline to cooperate in offsite emergency planning or preparedness.

The Need for the Proposed Action

In August of 1980, the Commission published revised emergency planning regulations which required, *inter alia*, that emergency plans be developed by licensees in cooperation with State and local governments. The Commission premised the new rules on a coordinated effort among all parties.

This coordination has proved impossible to achieve in a few isolated cases. The present rulemaking is intended to cover those cases not contemplated by the 1980 amendments.

Alternatives Considered

The alternative considered was to leave the existing rules intact. The costs and benefits of the proposed action and of the alternative are discussed in the proposed rule preamble published in the Federal Register.

Environmental Impacts of the Proposed Action

Adoption of the proposed rule could, in a few cases where State or local governments do not cooperate in emergency planning, result in nuclear plant operation with less than optimum governmental coordination in emergency planning. In this circumstance, 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. The NRC believes that the extent of this incremental risk is not significant, since: (1) the likelihood of an accident that would trigger the need for a fully coordinated emergency response is very small, given other NRC safety requirements; and (2) even assuming a serious accident, an adequate and coordinated response may still be possible, given the fact that State and local governments will in fact respond in an actual emergency, and given the requirement in the proposed rule that applicant's offsite plan includes effective measures to compensate for a lack of cooperation which are reasonable and achievable and which take into account a possible State or local response to an actual

emergency. Although the amendments could result in earlier operation of a few facilities than might be expected under existing rules, the environmental impacts associated with each such facility have already been considered in full environmental impact statements.

#### Agencies and Persons Consulted

The Federal Emergency Management Agency (FEMA) has been informally consulted during the preparation of this notice. FEMA's views will be formally sought during the public comment period.

#### Finding of No Significant Impact

Based upon the above assessment, the Commission has decided not to prepare an environmental impact statement for the proposed amendments. It should be noted that a similar finding was made by the Commission in promulgating the 1980 emergency planning amendments. The current amendments represent a limited modification of those rules.