



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 26, 2005

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-05-0045

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

The Commission approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of October 26, 2005.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, appearing to read "Annette L. Vietti-Cook", written over a horizontal line.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
EDO
PDR

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

VOTING SUMMARY - SECY-05-0045

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X				X	7/19/05
COMR. MCGAFFIGAN	X				X	10/14/05
COMR. MERRIFIELD	X				X	7/6/05
COMR. JACZKO		X			X	10/20/05
COMR. LYONS	X				X	6/29/05

COMMENT RESOLUTION

In their vote sheets, a majority of Commissioners (Chairman Diaz, Commissioners McGaffigan, Merrifield and Lyons) approved the staff's recommendation and provided some additional comments. Commissioner Jaczko disapproved and provided additional comment. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on October 26, 2005.

SECY NOTE:

THIS VOTING RECORD WILL BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS AFTER DISPATCH OF THE LETTER TO THE PETITIONER.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN DIAZ
SUBJECT: **SECY-05-0045 - DENIAL OF A PETITION FOR
RULEMAKING TO REVISE 10 CFR PART 50 TO
REQUIRE OFFSITE EMERGENCY PLANS TO
INCLUDE NURSERY SCHOOLS AND DAY CARE
CENTERS (PRM-50-79)**

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

Approved with edits and comments.

[Handwritten Signature]
SIGNATURE
July 19, 05
DATE

Entered on "STARS" Yes No _____

Chairman Diaz's Comments on SECY-05-0045

I approve the staff's recommendation to deny the petition for rulemaking discussed in SECY-05-0045, "Denial of a Petition for Rulemaking to Revise 10 CFR Part 50 to Require Offsite Emergency Plans to Include Nursery Schools and Day Care Centers (PRM-5-79)." I also approve the staff's recommendation to publish the associated Federal Register notice provided by SECY-05-0045, subject to the attached edits and the edits provided by Commissioner Merrifield.

I agree with the staff's determination that the emergency planning requirements, as currently codified, adequately address the issues discussed in the petition and that rulemaking to change the regulations is not necessary in order to protect children in nursery schools and daycare centers. I also agree that some of the petitioner's requests are inappropriate for inclusion in NRC regulations due to their very prescriptive nature.

In evaluating the petition, the staff determined that the petitioner raised questions about potential local implementation and compliance issues. I commend the staff on their efforts to work cooperatively with the Federal Emergency Management Agency (FEMA) to look into these issues during the Three Mile Island emergency exercise that took place in May 2005. I understand that, although FEMA's report on this exercise has not been finalized, FEMA's evaluation of aspects involving nurseries and day care centers did not identify any deficiencies and has not brought into question the adequacy of the emergency plans. This further reinforces the prior determination that the emergency plans in place would be protective of public health and safety in the event of an accident.

Notwithstanding the staff's efforts related to this petition, I agree with Commissioner Merrifield's proposal for the staff to engage FEMA to ascertain whether additional guidance would be appropriate in the area of communication between State and local government officials and daycare centers and nursery schools. It is important for personnel at these facilities to be cognizant of their responsibilities and of the plans in place that apply to them. I also support Commissioner Merrifield's comment that the staff should brief the Commissioners' Technical Assistants on the essential characteristics of the NRC staff's review of FEMA findings on adequacy of offsite planning, and whether the staff's ongoing comprehensive review of emergency planning will address revisions to this process.



NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-79]

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

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by Mr. Lawrence T. Christian and 3,000 co-signers on September 4, 2002. The petition was docketed by the NRC on September 23, 2002, and has been assigned Docket No. PRM-50-79. The petition requests that the NRC amend its regulations regarding offsite state and local government emergency plans for nuclear power plants to ensure that all daycare centers and nursery schools in the vicinity of nuclear power facilities are properly protected in the event of a radiological emergency.

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

<http://ruleforum.llnl.gov>.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

In December 1979, the President directed the Federal Emergency Management Agency (FEMA), to lead state and local emergency planning and preparedness activities with respect to jurisdictions in proximity to nuclear reactors. FEMA has responsibilities under Executive Order 12148, issued on July 15, 1979, to establish federal policies and to coordinate civil emergency planning within emergency preparedness programs. Consequently, FEMA is the lead authority concerning the direction, recommendations, and determinations with regard to offsite state and local government radiological emergency planning efforts necessary for the public health and safety. FEMA sends its findings to the NRC for final determinations. FEMA implemented Executive Order 12148 in its regulations outlined in 44 CFR Part 350. Within the framework of authority created by Executive Order 12148, FEMA entered into a Memorandum of Understanding (MOU) (58 FR 47966, September 9, 1993) with the NRC to provide

acceptance criteria for and determinations as to whether state and local government emergency plans are adequate and capable of being implemented to ensure public health and safety. FEMA's regulations were further amplified by FEMA Guidance Memorandum (GM) EV-2, "Protective Actions for School Children" and FEMA-REP-14, "Radiological Emergency Preparedness Exercise Manual."

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

All nuclear power reactor licensees are required under Part 50, as amplified by NUREG-0654/FEMA-REP-1, to develop specific plans for all "special facility populations," which refers not only to pre-schools, nursery schools, and daycare centers, but all kindergarten

through twelfth grade (K-12) students, nursing homes, group homes for physically or mentally challenged individuals and those who are mobility challenged, as well as those in correctional facilities. FEMA GM 24, "Radiological Emergency Preparedness for Handicapped Persons," dated April 5, 1984, and GM EV-2, "Protective Actions for School Children," dated November 13, 1986, provide further guidance. These specific plans shall, at a minimum:

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

All plans are finalized and submitted to FEMA for review. The plans are tested in a biennial emergency preparedness exercise conducted for each nuclear power station. If plans or procedures are found to be inadequate, they must be corrected.

AVAILABILITY OF DOCUMENTS

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

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

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

this Website.

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

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

Document	PDR	Web	ADAMS	NRC Staff
Petition for Rulemaking (PRM-50-79)	X	X	ML023110466	
<i>Federal Register</i> Notice – Receipt of Petition for Rulemaking (67 FR 66588; Nov. 1, 2002)	X	X	ML023050008	
<i>Federal Register</i> Notice – Receipt of Petition for Rulemaking; Correction (67 FR 67800; Nov. 7, 2002)	X	X	ML040770516	
Public Comments, Part 1 of 2	X	X	ML040770480	
Public Comments, Part 2 of 2	X	X	ML040770544	
Additional Public comments		X	ML041910013	
Letter of Denial to the Petitioners	X	X	ML040300094	
RG 1.101, Rev. 4, Emergency Planning and Preparedness for Nuclear Power Reactors (July 2003)	X		ML032020276	
NUREG-0654/FEMA REP-1, Rev. 1, Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants (November 1980)	X		ML040420012	
NUREG-0654/FEMA-REP-1, Rev. 1 Addenda (March 2002)	X		ML021050240	
Executive Order 12148, Federal				

Emergency Management (July 20, 1979)	X
MOU Between FEMA and NRC Relating to Radiological Emergency Planning and Preparedness (June 17, 1993)	X
FEMA GM 24, Radiological Emergency Preparedness for Handicapped Persons (April 5, 1984)	X
FEMA-REP-14, Radiological Emergency Preparedness Exercise Manual (September 1991)	X
FEMA GM EV-2, Protective Actions for School Children (November 13, 1986)	X

THE PETITIONERS REQUEST

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

- A. Assigned to designated relocation centers established safely outside of the EPZ.
- B. Provided with designated transportation to a relocation center in the event of an emergency evacuation.
- C. Transported in approved child-safety seats that meet state and federal laws as they pertain to the transportation of children and infants under 50 pounds in weight or 4 feet 9 inches in height.

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

- D. The creation and maintenance of working rosters of emergency bus drivers and

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

- E. Notification of emergency management officials by individual preschools as to the details of each institution's radiological emergency plan.
- F. Annual site inspections of daycare centers and nursery schools within the evacuation zone by emergency management officials.
- G. Participation of daycare centers and nursery schools within the EPZ in radiological emergency preparedness exercises designed to determine each institution's state of readiness.
- H. Creation of identification cards, school attendance lists, and fingerprint records for all children who are to be transported to a relocation center, to ensure no child is left behind or is unable, due to age, to communicate his or her contact information to emergency workers.
- I. Development by emergency management officials of educational materials for parents, informing them what will happen to their children in case of a radiological emergency, and where their children can be picked up after an emergency evacuation.
- J. Stocking of potassium iodide (KI) pills and appropriate educational materials at all daycare centers and nursery schools within the EPZ.
- K. Radiological emergency preparedness training for all daycare center and nursery school employees within the EPZ.
- L. Listing of designated relocation centers for daycare centers and nursery schools

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

- M. Establishment of toll-free or 911-type telephone lines to provide information about radiological emergency plans and procedures for daycare centers and nursery schools within the EPZ.
- N. Creation of written scripts for use by the local Emergency Alert System (EAS) that include information about evacuation plans and designated relocation centers for daycare centers and nursery schools.

PUBLIC COMMENTS

The NRC received 55 public comment letters relating to this petition. Twenty-five letters supported granting the petition (mostly from citizens including three letters with 410 signatures), while 30 letters requested that the petition be denied. Those letters that supported denial of the petition were primarily from state and local governmental agencies, FEMA, and licensees.

More specifically;

25 Letters supporting the granting of the petition:

- 14 Comment letters from citizens supporting the granting of the petition.
- 1 Comment letter from a citizens group supporting the granting of the petition.
- 4 Comment letters from local governmental agencies or officials supporting the petition.
- 3 Comment letters with 410 signatures supporting the petition.
- 1 Letter from the petitioner supporting the petition. The petitioner also "suggests a federal model that mirrors the Illinois, Massachusetts, Michigan, or Nebraska..."

In addition, the NRC received 1 letter that discussed KI but did not take a position on the petition.

emergency plans for daycare centers and nursery schools, even though those state plans only meet about 30 percent of the elements requested by the petitioner, while meeting FEMA guidance.

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

1 Letter from the Governor of Pennsylvania withdrawing an earlier submitted letter, and supporting the granting of the petition.

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

30 Letters asking the Commission to deny the petition:

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

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

12 Letters from State governments including two letters from FEMA (Headquarters and Region 7) to deny the petition, based on the opinion that the petitioners' request^s ~~is~~ ^{are} adequately addressed in current regulations and guidance. X

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

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

1 Letter representing six licensees to deny the petition.

NRC EVALUATION

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

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

NRC Review:

The current regulatory structure already requires that daycare centers and nursery schools be included in the offsite emergency planning for nuclear power plants, and that ~~and that~~ consequently, no revision to 10 CFR Part 50 is necessary. The Commission's emergency planning regulations, in 10 CFR 50.47, require the NRC to make a finding, before issuing an initial operating license, that there is "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." Implicit in this regulation is the requirement that offsite emergency plans be protective of all members of the public, including children attending daycare centers and nursery schools, within the 10-mile EPZ. Joint NRC and FEMA implementing guidance, NUREG-0654/FEMA-REP-1, Rev. 1, states that emergency plans must provide specific means for "protecting those persons whose mobility may be impaired due to such factors as institutional or other confinement." NUREG-0654, Section II.J. and Appendix 4, as well as, FEMA GM 24, "Radiological Emergency Preparedness for Handicapped Persons," dated April 5, 1984, also provide guidance. Children in daycare centers and nursery schools are included in the category of persons needing special protection. FEMA GM EV-2, "Protective Actions for School Children," was issued to provide guidance to assist federal officials in evaluating adequacy of state and local government offsite emergency plans

under 10CFR 50.47(a)(2).

and whether there is reasonable assurance that they can be implemented.

and preparedness for protecting school children during a radiological emergency. It specifically addresses licensed and government supported pre-schools and daycare centers, but has been implemented to include all daycare centers and nursery schools with more than 10 children.

FEMA is the federal agency responsible for making findings and determinations as to whether state and local emergency plans are adequate, and ^{FEMA} uses the guidance documents discussed above to make such findings. The NRC makes its findings ^{under}

~~10 CFR 50.47(a)(2)~~ ^{as to whether} that the emergency plans provide a reasonable assurance that adequate protective measures can and will be taken ^{The NRC's findings are} based upon FEMA findings and determinations ^{in this area.}

~~whether state and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented.~~ The NRC would not grant an initial operating license

if FEMA found that state and local government emergency plans did not adequately address daycare centers and nursery schools. In accordance with 10 CFR 50.54(s)(2)(ii), if significant deficiencies in a licensee's emergency plan were discovered after its operating license was issued, and those deficiencies were not corrected within four months of discovery (or a plan for correction was not in place), the Commission would determine whether the reactor should be

shut down until the deficiencies are remedied or whether some other enforcement action would be appropriate. Based on this information and ^{and considering that} the existing regulatory structure, no revision to 10 CFR Part 50 is necessary in response to the petitioners' general request.

The more specific elements of the petition follow:
A. ^{Require that} Children attending daycare centers and nursery schools ^{be} are assigned to designated relocation centers established safely outside the EPZ.

NRC Review:

The petitioners' requested revision to 10 CFR Part 50 is not needed because the requested action is already covered by FEMA guidance documents. FEMA's GM EV-2 (pp. 2

already has requirements addressing the facilities of concern to the petitioners

X
X
X

From
SSM
vote

X

X

X

From
SSM
vote

and 4) ^{specifies} provides that state and local government offsite emergency plans ^{should} designate relocation centers outside of the 10-mile EPZ for all schools, including daycare centers and nursery schools. FEMA assesses offsite emergency plans using this guidance when making a finding that a plan adequately protects the public, ~~and the NRC cannot license or allow a plant to continue to operate if FEMA does not make such a finding.~~ Under the MOU between FEMA and the NRC, the NRC defers to FEMA's expertise in offsite emergency plan requirements and assessments. X

B. ^{Require that} ~~1~~ Children attending daycare centers and nursery schools ^{be} are provided with designated transportation to relocation centers in the event of an emergency evacuation. X

NRC Review:

As previously discussed, FEMA is the federal agency responsible for making findings and determinations as to whether state and local emergency plans are adequate, ~~and the NRC cannot license or allow a plant to continue to operate if FEMA does not make such a finding or if the NRC does not have a specific basis for overriding FEMA's finding.~~ FEMA's GM EV-2 (pp. 2 and 4) ^{specifies} provides that the state and local government offsite emergency plans ^{should} designate transportation to relocation centers outside of the 10-mile EPZ for all schools including daycare centers and nursery schools. FEMA reviews emergency plans to ensure that this provision ^{is} is addressed. Consequently, a revision to 10 CFR Part 50 ~~would not be needed since the requested action is already provided for.~~ X

C. ^{Require that} ~~1~~ Children attending daycare and nursery schools ^{be} are transported in approved child-safety seats that meet state and federal laws as they pertain to the transportation of children and infants under 50 pounds in weight or 4 feet 9 inches in height. X

NRC Review:

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

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

NRC Review:

The petitioners' requested revision to 10 CFR Part 50 is not needed because NRC considers the ~~currently required~~ ^{existing requirements and guidance for} agreements between bus drivers and local authorities ^{to be} similar to the ^{requested} detailed driver lists and back-up driver requirements. FEMA's GM EV-2 (p. 10) ^{specifies that} provides bus drivers trained in basic radiological preparedness and dosimetry ^{are to be provided} for the evacuation of daycare and nursery schools. FEMA's GM EV-2 (p. 10) also ^{specifies that} provides for agreements between bus drivers and local authorities ^{are to be established} for the drivers to provide their services in an emergency. These agreements eliminate the need for a roster. Under the MOU between FEMA and the NRC, the

NRC defers to FEMA's expertise in state and local emergency plan requirements and assessments. ~~Absent compelling evidence that the FEMA guidelines and their implementation by state and local governments are deficient, the petitioners requested revision to 10 CFR Part 50 would not be needed because FEMA provides adequate and similar agreements, without the need for a roster.~~ ^{NRC has made FEMA aware of the petitioners' concerns, and FEMA recently completed an emergency preparedness exercise at TMI that included} ~~issues related to transportation of students attending daycare centers and nursery schools, FEMA's initial feedback to the NRC indicated there were~~ ^{no deficiencies in this area.}] From ISM vote

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

Although the petition requested that day care centers and nursery schools have the responsibility for conveying their emergency planning information to government officials, under current requirements, this communication burden rests with responsible state and local government officials.

From
SSM
Vote

NRC Review:

NRC considers that current NRC and FEMA requirements and guidance ^{are adequate.} ~~adequately~~ provide ~~for this request.~~ ^{Specifies} FEMA's GM EV-2 (p. 5) ~~provides~~ that the state and local government officials should take the initiative to identify and contact all daycare centers and nursery schools within the designated 10-mile plume exposure pathway EPZ to assure that there exists appropriate planning for protecting the health and safety of their students from a commercial nuclear power plant accident.

^{NRC and FEMA expect} local governments ~~should~~ ^{to} assume responsibility for the emergency planning and preparedness for all schools within their districted area, and ~~should~~ ^{to} work closely with school officials to coordinate planning efforts. FEMA's GM EV-2 (pp. 5 and 6) ^{Specifies} ~~provides~~ that local governments should also ensure that the emergency planning undertaken by schools is integrated within the larger state and local government offsite emergency management framework for the particular nuclear power plant site.

FEMA's GM EV-2 (pp. 5 and 6) ^{Specifies} ~~provides~~ that evacuation planning ^{is to} ~~shall~~ include a separate evacuation plan for all of the schools in each school system. School officials, with the assistance of state and local government offsite authorities, should document in the plan the basis for determining the proper protective action (e.g., evacuation; early preparatory measures, early evacuation, sheltering, early dismissal or combination) including:

- Identification of offsite organization and state and local government officials responsible for both planning and effecting the protective action.
- Institution-specific information:
 - Name and location of school;
 - Type of school and age grouping (e.g., public elementary school, grades kindergarten through sixth);

- Total population (students, faculty, and other employees);
 - Means for implementing protective actions;
 - Specific resources allocated for transportation, including supporting letters of agreement if resources are provided from external sources; and
 - Name and location of relocation center(s) and transport route(s), if applicable.
- If parts of the institution-specific information apply to many or all schools, then the information may be presented generically.
 - Time frames for implementing the protective actions.
 - Means for alerting and notifying appropriate persons and groups associated with the schools and the students including:
 - Identification of the organization responsible for providing emergency information to the schools;
 - The method (e.g., siren, tone-alert radios, and telephone calls) for contacting and activating designated dispatchers and school bus drivers; and
 - The method (e.g., Emergency Alert System (EAS) messages) for notifying parents and guardians of the status and location of their children.

~~Absent compelling evidence that these guidelines are deficient, the Commission believes that the FEMA guidance is adequate to ensure communication between school officials and local government emergency planning offices. Consequently, the petitioners' requested revision to 10 CFR Part 50 is not required.~~

From
ISM
Vote

Based on the above

F. Require annual site inspections of daycare centers and nursery schools within the

evacuation zone by emergency management officials.

NRC Review:

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

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

NRC Review:

FEMA's GM EV-2 (pp. 6 and 7) ^{specifies} ~~provides~~ that offsite organizations, with assigned responsibilities for protecting daycare centers and nursery schools, ^{are to} demonstrate their ability to protect the students in an exercise. This ensures that in a radiological emergency, plans for protecting daycare centers and nursery schools will be enacted successfully while preventing disruption to the children attending these schools. Current NRC regulations in 10 CFR Part 50, Appendix E, reflect this FEMA guidance. Section F.2 of Appendix E permits exercises without public (including daycare centers and nursery schools) participation. The Commission has determined that exercises can be adequately evaluated without the participation of schools or members of the public. This eliminates safety concerns for students, as well as, the disruption of daycare center and nursery school activities. ^{that might arise during exercise participation} The petition has presented no evidence that would cause the NRC to reconsider this determination.

X
X

From
SSM
Vote

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

X

In addition, as mentioned in the response to request "E," pursuant to FEMA guidance, state and local government officials should be contacting daycare centers and nursery schools regarding emergency plans for the facilities.

From
SSM
Vote

emergency workers.

NRC Review:

State and local governments have the responsibility for ensuring that licensed daycare centers and nursery schools have mechanisms in place for maintaining child accountability. FEMA, as the authority on offsite emergency planning, has ~~declined~~ ^{determined that it is unnecessary} to require that such detailed mechanisms be a component of emergency plans. The Commission finds no safety reason to justify requiring such detailed mechanisms in its regulations. X

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

NRC Review:

Current NRC and FEMA requirements and guidance adequately ~~provide~~ ^{address} for this specific request. FEMA's GM EV-2 (p. 2) ~~provides~~ ^{specifies} that the Emergency Alert System (EAS) is to notify parents of the status and location of their children in the event of an emergency. There is

~~no need for pre-notification, which could in fact be counterproductive if, due to circumstances of the radiological event, the children needed to be sent to a different relocation center. In the absence of compelling evidence that notification via the EAS is inadequate, the Commission finds no safety reason to justify the requested revision to 10 CFR Part 50.~~

The Commission believes parental notification via the EAS is adequate to assure that parents will be informed of their children's location following an emergency evacuation.

From
SSM
Vote

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

NRC Review:

The Commission's regulations, specifically 10 CFR 50.47b.(10), require individual states to consider using KI in the event of an emergency. The regulations require that a range of protective actions be developed for the plume exposure pathway EPZ for emergency workers

and the public. In developing this range of actions, consideration was to be given to evacuation, sheltering, and, as a supplement to these, the prophylactic use of KI, as appropriate. Under this regulation, each individual state must decide whether the stockpiling of KI is appropriate for the citizens within its jurisdiction. Once a state decides to stockpile KI, it is incumbent on that state to develop a program for distribution. This program is reviewed by FEMA under the 44 CFR 350 process. The petition ^{did not} ~~failed to~~ provide information that would cause the NRC to reconsider this determination. X

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

NRC Review:

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

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

NRC Review:

✓ ~~As previously discussed, FEMA is the federal agency responsible for making findings and determinations as to whether state and local emergency plans are adequate. FEMA's GM EV-2 (p. 4) ^{specifies} ~~provides~~ that state and local government offsite emergency plans ^{are to} designate~~ X

From
SSM
vote

relocation centers outside of the 10-mile EPZ for all schools, including daycare centers and nursery schools. Some states list the relocation centers in telephone directories, some states identify the relocation centers in the yearly public information packages, and some states

identify the relocation centers in their offsite emergency plans. ^① ~~Absent compelling information that current publication practices are inadequate, the Commission finds no reason to justify the~~

From
SSM
Vote

~~requested revision to 10 CFR Part 50. The Commission believes that the current publication practices are adequate.~~

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

NRC Review:

Although not required by NRC regulations or provided in FEMA guidance, ^② all states provide a toll-free phone number in the yearly public information package where members of the public can acquire emergency preparedness information. The Commission sees no added safety benefits in revising its regulations to require something that all states are already doing.

X

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

NRC Review:

FEMA's GM EV-2 (p. 6) ^{Specifies} ~~provides~~ ^{is to} that a method exist (e.g., EAS) for notifying daycare and nursery school parents of the status and location of their children, in the event of an

X

emergency. The Commission sees no added safety benefit ⁱⁿ requiring a written script ~~when~~ FEMA has ~~declined~~ ^{decided that it is unnecessary} to incorporate such a prescriptive requirement into its regulations and guidance, and the petition provided no evidence that the current method of notification is

inadequate. As a result, ←

① See March 23, 2005 letter from Roy Zimmerman to Eric J. Epstein and March 24, 2005 letter from Roy Zimmerman to Lawrence T. Christian (available on NRC's ADAMS document system under the accession numbers ML050590344 and ML050590357, respectively).

From
SSM
Vote

COMMISSION EVALUATION

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

1. Ensure Protection of Public Health and Safety and the Environment: The NRC staff believes that the requested rulemaking would not make a significant contribution to maintaining safety because current NRC and FEMA regulations and guidance already require inclusion of nursery schools and daycare centers in state and local government offsite emergency plans. This was verified by the state governments that submitted comment letters which stated that daycare and nursery schools are included in their offsite emergency planning and that this is not an issue requiring a change to the emergency planning regulations. As such, it is a potential compliance issue that ~~exists on a local level rather than a regulatory issue that exists on a national level~~, and can be resolved using the current regulatory structure.

2. Ensure the Secure Use and Management of Radioactive Materials

The requested regulatory amendments would have no impact on the security provisions necessary for the secure use and management of radioactive materials. The petition for rulemaking deals with the taking of protective actions for nursery schools and day care centers by offsite authorities, which is currently required by NRC and FEMA regulations and guidance.

3. Ensure Openness in Our Regulatory Process: The ^{requested rulemaking} ~~proposed revisions~~ would not enhance public confidence or openness in our regulatory process because the

The NRC Staff does not believe that the contentions identify deficiencies in regulatory requirements.

petitioners' contentions are based on a potential ^{raise} ~~lack~~ ^{issues} of compliance with ^{the} existing requirements and guidance, and do not provide a basis for amending the regulation.

Appendix 4 in NUREG-0654, discusses "special facility populations." Daycare centers and nursery schools fall under the definition of a "special facility populations" and as such, it is the responsibility of state and local governments ^{are currently required} to ensure that these populations are included in the offsite emergency response plans. ~~The staff does not believe that such unnecessary regulatory action, without adequate justification, would ensure openness in the NRC regulatory process.~~ It should be noted, however, that 3000 members of the public co-signed the original petition for rulemaking. Additionally, 410 members of the public signed letters supporting the petition. This amount of public support reinforces the importance of NRC and FEMA's continued commitment of providing protection for the public in the event of an emergency which has always included daycare centers and nursery schools.

- 4. Ensure that NRC Actions Are Effective, Efficient, Realistic and Timely: The proposed revisions would decrease efficiency and effectiveness because current NRC and FEMA regulations and guidance already ^{adequately address} ~~provide for many~~ of the petition requests. Amending the regulations would require licensees and state and local governments to generate additional and more prescriptive information in their emergency plans, and the NRC and FEMA staffs would need to evaluate the additional information. ~~The NRC staff believes that this additional information would be of no safety value.~~ The additional NRC staff and licensee effort would not improve efficiency or effectiveness. In addition, the NRC resources expended to promulgate the rule and supporting regulatory guidance would be significant with little return value.

X
From JSM note

5. Ensure Excellence in Agency Management: The requested rule would have no effect on the excellence in NRC management, but would increase licensee and state and local government burden by requiring the generation of additional, unnecessary, and burdensome information with little expected benefit because current NRC and FEMA regulations and guidance already ~~provide for many~~ ^{adequately address} ⁽⁹⁾ the petitions requests. This rulemaking would add significant burden on a national scale in order to address a potential local compliance issue. X

Reason for Denial

The Commission is denying the petition for rulemaking (PRM-50-79) submitted by Mr. Lawrence T. Christian, et. al. Current NRC requirements and NRC and FEMA guidance, provide reasonable assurance of adequate protection of all members of the public, including children attending daycare centers and nursery schools, in the event of a nuclear power plant incident. Many of the specific requests of the petitioner are either already covered by regulations and/or guidance documents or are inappropriate for inclusion in NRC regulations due to their very prescriptive nature. The Commission does believe, however, that information obtained during the review of the petition does raise questions about local implementation of relevant requirements and guidelines. Accordingly, the petition is denied and forwarded to

FEMA for review and investigation. NRC staff met with FEMA officials to assure an understanding of this issue for consideration by FEMA as reflected in separate letters to the petitioner and TMI-Alert Chairman, ERIC Epstein dated respectively, March 23, 2005 and March 24, 2005. Copies of those letters are available through the NRC's ADAMS document system and can be located using the accession numbers MLO50590344 and MLO50590357, respectively. The NRC staff will continue to dialogue with FEMA to ensure emergency planning exercises are appropriately focused and provide adequate assurance regarding compliance with NRC and FEMA regulations and guidance.

From
SSM
vote

@ FEMA did participate in a May 3, 2005 Emergency Planning exercise at TMI. NRC understands that during this exercise FEMA reviewed aspects of emergency planning involving nurseries and day care centers. No deficiencies were identified by FEMA during the exercise and NRC understands that FEMA's final report on the exercise is expected later this year.

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

Dated at Rockville, Maryland, this ____ day of _____, 2005.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook
Secretary of the Commission

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MCGAFFIGAN

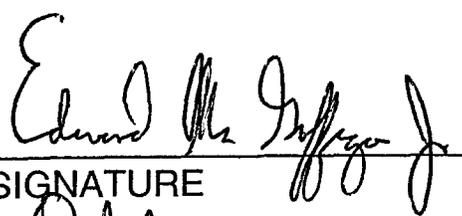
SUBJECT: **SECY-05-0045 - DENIAL OF A PETITION FOR
RULEMAKING TO REVISE 10 CFR PART 50 TO
REQUIRE OFFSITE EMERGENCY PLANS TO
INCLUDE NURSERY SCHOOLS AND DAY
CARE CENTERS (PRM-50-79)**

Approved Disapproved _____ Abstain _____

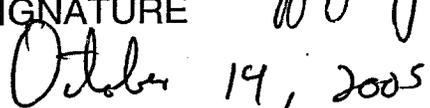
Not Participating _____

COMMENTS:

I hereby reinstate my vote (copy attached) from June 23, 2005 on this matter. I look forward to promptly participating in the staff requirements memorandum process, which is well underway.



SIGNATURE



DATE

Entered on "STARS" Yes No _____

NOTATION VOTE

RESPONSE SHEET

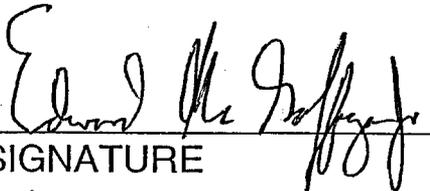
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-05-0045 - DENIAL OF A PETITION FOR
RULEMAKING TO REVISE 10 CFR PART 50 TO
REQUIRE OFFSITE EMERGENCY PLANS TO
INCLUDE NURSERY SCHOOLS AND DAY CARE
CENTERS (PRM-50-79)**

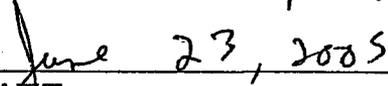
Approved ^{w/comment & edits} Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

I approve the proposed denial of the Petition for Rulemaking, subject to the attached edits to the Federal Register Notice and the proposed letter to the Petitioners.



SIGNATURE


DATE

Entered on "STARS" Yes No _____

and preparedness for protecting school children during a radiological emergency. It specifically addresses licensed and government supported pre-schools and daycare centers, but has been implemented to include all daycare centers and nursery schools with more than 10 children.

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

The more specific elements of the petition follow:

- A. Children attending daycare centers and nursery schools are assigned to designated relocation centers established safely outside the EPZ.

NRC Review:

The petitioners requested revision to 10 CFR Part 50 is not needed because the requested action is already covered by FEMA guidance documents. FEMA's GM EV-2 (pp. 2

NRC Review:

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

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

NRC Review:

The petitioners' requested revision to 10 CFR Part 50 is not needed because NRC considers the currently required agreements between bus drivers and local authorities similar to detailed driver lists and back-up driver requirements. FEMA's GM EV-2 (p. 10) provides bus drivers trained in basic radiological preparedness and dosimetry for the evacuation of daycare and nursery schools. FEMA's GM EV-2 (p. 10) also provides for agreements between bus drivers and local authorities for the drivers to provide their services in an emergency. These agreements eliminate the need for a roster. Under the MOU between FEMA and the NRC, the NRC defers to FEMA's expertise in state and local emergency plan requirements and assessments. ~~NRC has made FEMA aware of the petitioner's concerns and we understand that FEMA's participation in a recently completed emergency exercise at TMI included review of issues related to nursery schools and day care centers. Absent compelling evidence that the FEMA guidelines and their implementation by state and local governments are deficient, the petitioners requested revision to 10 CFR Part 50 would not be needed because FEMA provides adequate and similar agreements, without the need for a roster.~~

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

- Total population (students, faculty, and other employees);
 - Means for implementing protective actions;
 - Specific resources allocated for transportation, including supporting letters of agreement if resources are provided from external sources; and
 - Name and location of relocation center(s) and transport route(s), if applicable.
- If parts of the institution-specific information apply to many or all schools, then the information may be presented generically.
 - Time frames for implementing the protective actions.
 - Means for alerting and notifying appropriate persons and groups associated with the schools and the students including:
 - Identification of the organization responsible for providing emergency information to the schools;
 - The method (e.g., siren, tone-alert radios, and telephone calls) for contacting and activating designated dispatchers and school bus drivers; and
 - The method (e.g., Emergency Alert System (EAS) messages) for notifying parents and guardians of the status and location of their children.

~~Absent compelling evidence that these guidelines are deficient, the Commission believes that the FEMA guidance is adequate to ensure communication between school officials and local government emergency planning offices. Consequently, the petitioners requested revision to 10 CFR Part 50 is not required.~~

F. Require annual site inspections of daycare centers and nursery schools within the

evacuation zone by emergency management officials.

NRC Review:

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

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

NRC Review:

FEMA's GM EV-2 (pp. 6 and 7) provides that offsite organizations, with assigned responsibilities for protecting daycare centers and nursery schools, demonstrate their ability to protect the students in an exercise. This ensures that in a radiological emergency, plans for protecting daycare centers and nursery schools will be enacted successfully while preventing disruption to the children attending these schools. Current NRC regulations in 10 CFR Part 50, Appendix E, reflect this FEMA guidance. Section F.2 of Appendix E permits exercises without public (including daycare centers and nursery schools) participation. The Commission has determined that exercises can be adequately evaluated without the participation of schools or members of the public. This eliminates safety concerns for students, as well as, the disruption of daycare center and nursery school activities that might arise during exercise participation. The petition has presented no evidence that would cause the NRC to reconsider this determination.

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

emergency workers.

NRC Review:

State and local governments have the responsibility for ensuring that licensed daycare centers and nursery schools have mechanisms in place for maintaining child accountability. FEMA, as the authority on offsite emergency planning, has declined to require that such detailed mechanisms be a component of emergency plans. The Commission finds no safety reason to justify requiring such detailed mechanisms in its regulations.

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

NRC Review:

Current NRC and FEMA requirements and guidance adequately provides for this specific request. FEMA's GM EV-2 (p. 2) provides that the Emergency Alert System (EAS) notify parents of the status and location of their children in the event of an emergency. There is no need for pre-notification, which could in fact be counterproductive if, due to circumstances of the radiological event, the children needed to be sent to a different relocation center. ~~In the absence of compelling evidence that notification via the EAS is inadequate, the Commission finds no safety reason to justify the requested revision to 10 CFR Part 50.~~

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

NRC Review:

The Commission's regulations, specifically 10 CFR 50.47b.(10), require individual states to consider using KI in the event of an emergency. The regulations require that a range of protective actions be developed for the plume exposure pathway EPZ for emergency workers

relocation centers outside of the 10-mile EPZ for all schools, including daycare centers and nursery schools. Some states list the relocation centers in telephone directories, some states identify the relocation centers in the yearly public information packages, and some states identify the relocation centers in their offsite emergency plans.¹ ~~Absent compelling information that current publication practices are inadequate, the Commission finds no reason to justify the requested revision to 10 CFR Part 50:~~

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

NRC Review:

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

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

NRC Review:

FEMA's GM EV-2 (p. 6) provides that a method exist (e.g., EAS) for notifying daycare and nursery school parents of the status and location of their children, in the event of an emergency. The Commission sees no added safety benefit of requiring a written script when FEMA has declined to incorporate such a prescriptive requirement into its regulations and guidance, and the petition provided no evidence that the current method of notification is inadequate.

¹See March 23, 2005 letter From Roy Zimmerman to Eric J. Epstein and March 24, 2005 letter from Roy Zimmerman to Lawrence T. Christian (available on NRC's ADAMS document system under the accession numbers ML050590344 and ML050590357, respectively).

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

Reason for Denial

The Commission is denying the petition for rulemaking (PRM-50-79) submitted by Mr. Lawrence T. Christian, et. al. Current NRC requirements and NRC and FEMA guidance, provide reasonable assurance of adequate protection of all members of the public, including children attending daycare centers and nursery schools, in the event of a nuclear power plant incident. Many of the specific requests of the petitioner are either already covered by regulations and/or guidance documents or are inappropriate for inclusion in NRC regulations due to their very prescriptive nature. The Commission does believe, however, that information obtained during the review of the petition does raise questions about local implementation of relevant requirements and guidelines. Accordingly, ~~the petition is denied and forwarded to FEMA for review and investigation. The NRC staff met with FEMA officials to assure an understanding of this issue for consideration by FEMA as reflected in separate letters to the petitioner and TMI Alert Chairman, Eric Epstein dated, respectively, March 23, 2005 and March 24, 2005. Copies of those letters are available through the NRC's ADAMS document system and are located under the accession numbers ML050590344 and ML050590357, respectively.~~²

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

² FEMA did participate in a May 3, 2005 Emergency Planning exercise at TMI. NRC understands that during this exercise FEMA did look at aspects of emergency planning involving nurseries and day care centers. No deficiencies were identified by FEMA during the exercise and NRC understands that FEMA's report on the exercise results is expected later this year.

Lawrence T. Christian
133 Pleasant View Terrace
New Cumberland, PA 17070-2844

Dear Mr. Christian:

I am responding to your letter dated September 4, 2002, in which you submitted a petition for rulemaking. The petition was docketed by the Nuclear Regulatory Commission (NRC) on September 23, 2002, and has been assigned Docket No. PRM-50-79. The petition requests that the NRC amend its regulations regarding offsite emergency plans for nuclear power plants to ensure that all daycare centers and nursery schools in the vicinity of nuclear power facilities are properly protected in the event of a radiological emergency.

The petition was published in the *Federal Register* on November 1, 2002, for a 75-day public comment period. The NRC received 55 public comment letters relating to this petition. Twenty-four letters supported granting the petition (mostly from citizens, including three letters with 410 signatures), while 30 letters requested that the petition be denied. Those letters that supported denial of the petition were mostly from state and local governmental agencies, the Federal Emergency Management Agency (FEMA), and NRC licensees.

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

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

The Commission's emergency planning regulations, specifically 10 CFR 50.47(a)(1), require that nuclear power plant licensees develop and maintain emergency plans that provide reasonable assurance that adequate protective actions can and will be taken for the protection of the public in an emergency. Section 50.47(a)(2) states that the NRC will base its findings regarding adequacy of these plans on a review by FEMA, who will determine if the plans are adequate and whether there is reasonable assurance that they can be implemented. NRC and

¹ FEMA did participate in a May 3, 2005 Emergency Planning exercise at TMI. NRC understands that during this exercise FEMA did look at aspects of emergency planning involving nurseries and day care centers. No deficiencies were identified by FEMA during the exercise and NRC understands that FEMA's report on the exercise results is expected later this year.

FEMA promulgated NUREG-0654/FEMA-REP-1 to provide detailed guidance on the development and implementation of these plans. Appendix 4 of NUREG-0654 details the requirements for the identification and planning for special facility populations and schools. FEMA Guidance Memorandum (GM) EV-2, "Protective Actions For School Children," provides guidance to assist federal officials in evaluating adequacy of state and local government offsite emergency plans and preparedness for protecting school children during a radiological emergency. The term "school" refers to public and private schools, pre-schools, and daycare centers with 10 or more students. The state and local government offsite emergency plans shall include at a minimum:

- identifying the populations of all school facilities,
- determining and providing for protective actions for these populations,
- establishing and maintaining notification methods for these facilities, and
- determining and providing for transportation and relocation.

These requirements are assessed at the biennial exercise at each nuclear power plant site. The Commission believes that current emergency planning requirements provide reasonable assurance of adequate protection of all members of the public, including children in nursery schools and daycare centers. Further details are discussed in the enclosed notice of Denial of Petition for Rulemaking, which will be published in the *Federal Register*.

Sincerely,

Annette L. Vietti-Cook
Secretary of the Commission

Enclosures:
Federal Register Notice of Petition for Rulemaking

NOTATION VOTE
RESPONSE SHEET

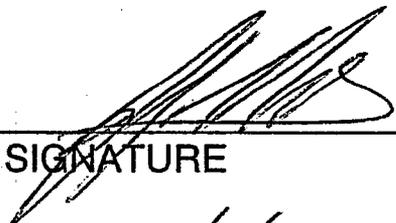
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-05-0045 - DENIAL OF A PETITION FOR
RULEMAKING TO REVISE 10 CFR PART 50 TO
REQUIRE OFFSITE EMERGENCY PLANS TO
INCLUDE NURSERY SCHOOLS AND DAY CARE
CENTERS (PRM-50-79)**

Approved Disapproved Abstain

Not Participating

COMMENTS:

See attached comments.



SIGNATURE

7/6/05

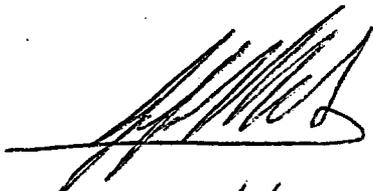
DATE

Entered on "STARS" Yes No

Commissioner Merrifield's Comments on SECY-05-0045

I approve the staff's recommendation to deny the petition for rulemaking, subject to the attached edits. I agree with the staff that current NRC regulations governing emergency planning are adequate and should not be revised to address concerns raised in this petition. Having said this, however, I am greatly concerned that there is confusion or ambiguity regarding the NRC's role in developing applicable standards for emergency preparedness and reviewing FEMA's findings pertaining to offsite emergency planning.

Pursuant to the 2003 Memorandum of Understanding (MOU) between FEMA and the NRC, the NRC is responsible for reviewing FEMA findings and determinations as to whether offsite plans are adequate and can be implemented, as well as for health and safety decisions regarding the overall state of emergency preparedness. According to the MOU, the NRC should also work cooperatively with FEMA to develop needed guidance, and assist FEMA in the development and review of offsite plans and preparedness through its membership on the Regional Assistance Committees. In this instance, the petition raised legitimate concerns about the level of communication between state and local government officials and daycare centers, nursery schools, and the parents of children attending these facilities regarding planning for radiological emergencies. Pursuant to the responsibilities outlined in the MOU, the staff should engage FEMA to ascertain whether additional exercise criteria or guidance documents are necessary to ensure that these concerns are adequately addressed. At the end of the day, it is the NRC that is responsible for making the final determination whether the overall state of emergency planning is or is not satisfactory. To this end, the staff should brief the Commission technical assistants on the criteria used to review FEMA findings on adequacy of offsite planning, and whether the staff's ongoing comprehensive review of emergency planning will address revisions to this process.



7/6/05

and preparedness for protecting school children during a radiological emergency. It specifically addresses licensed and government supported pre-schools and daycare centers, but has been implemented to include all daycare centers and nursery schools with more than 10 children.

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

The more specific elements of the petition follow:

- A. Children attending daycare centers and nursery schools are assigned to designated relocation centers established safely outside the EPZ.

NRC Review:

The petitioners requested revision to 10 CFR Part 50 is not needed because the requested action is already covered by FEMA guidance documents. FEMA's GM EV-2 (pp. 2

and 4) provides that state and local government offsite emergency plans designate relocation centers outside of the 10-mile EPZ for all schools, including daycare centers and nursery schools. FEMA assesses offsite emergency plans using this guidance when making a finding that a plan adequately protects the public, and the NRC cannot license or allow a plant to continue to operate if FEMA does not make such a finding. Under the MOU between FEMA and the NRC, the NRC defers to FEMA's expertise in offsite emergency plan requirements and assessments.

B. Children attending daycare centers and nursery schools are provided with designated transportation to relocation centers in the event of an emergency evacuation.

NRC Review:

As previously discussed, FEMA is the federal agency responsible for making findings and determinations as to whether state and local emergency plans are adequate, and the NRC cannot license or allow a plant to continue to operate if FEMA does not make such a finding or if the NRC does not have a specific basis for overriding FEMA's finding. FEMA's GM EV-2 (pp. 2 and 4) provides that the state and local government offsite emergency plans designate transportation to relocation centers outside of the 10-mile EPZ for all schools including daycare centers and nursery schools. FEMA reviews emergency plans to ensure that this provision~~s~~ is addressed. Consequently, a revision to 10 CFR Part 50 would not be needed since the requested action is already provided for. ✓

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

NRC Review:

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

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

NRC Review:

The petitioners' requested revision to 10 CFR Part 50 is not needed because NRC considers the currently required agreements between bus drivers and local authorities similar to the ~~the~~ ^{requested} detailed driver lists and back-up driver requirements. FEMA's GM EV-2 (p. 10) provides bus drivers trained in basic radiological preparedness and dosimetry for the evacuation of daycare and nursery schools. FEMA's GM EV-2 (p. 10) also provides for agreements between bus drivers and local authorities for the drivers to provide their services in an emergency. These agreements eliminate the need for a roster. Under the MOU between FEMA and the NRC, the NRC defers to FEMA's expertise in state and local emergency plan requirements and assessments. ^{NRC has made FEMA aware of the petitioners' concerns, and FEMA} ~~Absent compelling evidence that the FEMA guidelines and their implementation~~ ^{recently completed an emergency preparedness exercise at TMI that included} ~~by state and local governments are deficient, the petitioners requested revision to 10 CFR Part~~ ^{issues related to transportation of students attending daycare centers and} ~~50 would not be needed because FEMA provides adequate and similar agreements, without the~~ ^{need for a roster.} ~~need for a roster.~~ ^{no deficiencies in this area.} ✓

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

Although the petition requested that day care centers and nursery schools have the responsibility for conveying their emergency planning information to government officials, under current requirements, this communication burden rests with responsible state and local government officials.

NRC Review:

NRC considers that current NRC and FEMA requirements and guidance adequately provide for this request. FEMA's GM EV-2 (p. 5) provides that the state and local government officials should take the initiative to identify and contact all daycare centers and nursery schools within the designated 10-mile plume exposure pathway EPZ to assure that there exists appropriate planning for protecting the health and safety of their students from a commercial nuclear power plant accident.

Local governments should assume responsibility for the emergency planning and preparedness for all schools within their districted area, and should work closely with school officials to coordinate planning efforts. FEMA's GM EV-2 (pp. 5 and 6) provides that local governments should also ensure that the emergency planning undertaken by schools is integrated within the larger state and local government offsite emergency management framework for the particular nuclear power plant site.

FEMA's GM EV-2 (pp. 5 and 6) provides that evacuation planning shall include a separate evacuation plan for all of the schools in each school system. School officials, with the assistance of state and local government offsite authorities, should document in the plan the basis for determining the proper protective action (e.g., evacuation, early preparatory measures, early evacuation, sheltering, early dismissal or combination) including:

- Identification of offsite organization and state and local government officials responsible for both planning and effecting the protective action.
- Institution-specific information:
 - Name and location of school;
 - Type of school and age grouping (e.g., public elementary school, grades kindergarten through sixth);

- Total population (students, faculty, and other employees);
 - Means for implementing protective actions;
 - Specific resources allocated for transportation, including supporting letters of agreement if resources are provided from external sources; and
 - Name and location of relocation center(s) and transport route(s), if applicable.
- If parts of the institution-specific information apply to many or all schools, then the information may be presented generically.
 - Time frames for implementing the protective actions.
 - Means for alerting and notifying appropriate persons and groups associated with the schools and the students including:
 - Identification of the organization responsible for providing emergency information to the schools;
 - The method (e.g., siren, tone-alert radios, and telephone calls) for contacting and activating designated dispatchers and school bus drivers; and
 - The method (e.g., Emergency Alert System (EAS) messages) for notifying parents and guardians of the status and location of their children.

~~Absent compelling evidence that these guidelines are deficient, the Commission believes that the FEMA guidance is adequate to ensure communication between school officials and local government emergency planning offices. Consequently, the petitioners requested revision to 10 CFR Part 50 is not required.~~

F. Require annual site inspections of daycare centers and nursery schools within the

evacuation zone by emergency management officials.

NRC Review:

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

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

NRC Review:

FEMA's GM EV-2 (pp. 6 and 7) provides that offsite organizations, with assigned responsibilities for protecting daycare centers and nursery schools, demonstrate their ability to protect the students in an exercise. This ensures that in a radiological emergency, plans for protecting daycare centers and nursery schools will be enacted successfully while preventing disruption to the children attending these schools. Current NRC regulations in 10 CFR Part 50, Appendix E, reflect this FEMA guidance. Section F.2 of Appendix E permits exercises without public (including daycare centers and nursery schools) participation. The Commission has determined that exercises can be adequately evaluated without the participation of schools or members of the public. This eliminates safety concerns for students, as well as, the disruption of daycare center and nursery school activities. ^{that might arise during exercise participation.} The petition has presented no evidence that would cause the NRC to reconsider this determination.

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

In addition, as mentioned in the response to request "E," pursuant to FEMA guidance, state and local government officials should be contacting daycare centers and nursery schools regarding emergency plans for the facilities.

emergency workers.

NRC Review:

State and local governments have the responsibility for ensuring that licensed daycare centers and nursery schools have mechanisms in place for maintaining child accountability. FEMA, as the authority on offsite emergency planning, has declined to require that such detailed mechanisms be a component of emergency plans. The Commission finds no safety reason to justify requiring such detailed mechanisms in its regulations.

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

NRC Review:

Current NRC and FEMA requirements and guidance adequately provide~~s~~ for this specific request. FEMA's GM EV-2 (p. 2) provides that the Emergency Alert System (EAS) notify parents of the status and location of their children in the event of an emergency. ~~There is no need for pre-notification, which could in fact be counterproductive if, due to circumstances of the radiological event, the children needed to be sent to a different relocation center. In the absence of compelling evidence that notification via the EAS is adequate, the Commission finds no safety reason to justify the requested revision to 10 CFR Part 50.~~ *The Commission believes parental notification is adequate to assure that parents will be informed of their children's location following an emergency evacuation.* ✓

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

NRC Review:

The Commission's regulations, specifically 10 CFR 50.47b.(10), require individual states to consider using KI in the event of an emergency. The regulations require that a range of protective actions be developed for the plume exposure pathway EPZ for emergency workers

and the public. In developing this range of actions, consideration was to be given to evacuation, sheltering, and, as a supplement to these, the prophylactic use of KI, as appropriate. Under this regulation, each individual state must decide whether the stockpiling of KI is appropriate for the citizens within its jurisdiction. Once a state decides to stockpile KI, it is incumbent on that state to develop a program for distribution. This program is reviewed by FEMA under the 44 CFR 350 process. The petition failed to provide information that would cause the NRC to reconsider this determination.

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

NRC Review:

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

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

NRC Review:

~~As previously discussed, FEMA is the federal agency responsible for making findings and determinations as to whether state and local emergency plans are adequate. FEMA's~~
GM EV-2 (p. 4) provides that state and local government offsite emergency plans designate

relocation centers outside of the 10-mile EPZ for all schools, including daycare centers and nursery schools. Some states list the relocation centers in telephone directories, some states identify the relocation centers in the yearly public information packages, and some states identify the relocation centers in their offsite emergency plans. ^① ~~Absent compelling information that current publication practices are inadequate, the Commission finds no reason to justify the requested revision to 10 CFR Part 50.~~ *The Commission believes that the current publication practices are adequate.*

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

NRC Review:

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

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

NRC Review:

FEMA's GM EV-2 (p. 6) provides that a method exist (e.g., EAS) for notifying daycare and nursery school parents of the status and location of their children, in the event of an emergency. The Commission sees no added safety benefit of requiring a written script when FEMA has declined to incorporate such a prescriptive requirement into its regulations and guidance, and the petition provided no evidence that the current method of notification is inadequate.

① See March 23, 2005 letter from Roy Zimmerman to Eric J. Epstein and March 24, 2005 letter from Roy Zimmerman to Lawrence T. Christian (available on NRC's ADAMS document system under the accession numbers ML050590344 and ML050590357, respectively).

COMMISSION EVALUATION

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

1. **Ensure Protection of Public Health and Safety and the Environment:** The NRC staff believes that the requested rulemaking would not make a significant contribution to maintaining safety because current NRC and FEMA regulations and guidance already require inclusion of nursery schools and daycare centers in state and local government offsite emergency plans. This was verified by the state governments that submitted comment letters which stated that daycare and nursery schools are included in their offsite emergency planning and that this is not an issue requiring a change to the emergency planning regulations. As such, it is a potential compliance issue that exists on a local level rather than a regulatory issue that exists on a national level, and can be resolved using the current regulatory structure.

2. **Ensure the Secure Use and Management of Radioactive Materials**
The requested regulatory amendments would have no impact on the security provisions necessary for the secure use and management of radioactive materials. The petition for rulemaking deals with the taking of protective actions for nursery schools and day care centers by offsite authorities, which is currently required by NRC and FEMA regulations and guidance.

3. **Ensure Openness in Our Regulatory Process:** The proposed revisions would not enhance public confidence or openness in our regulatory process because the

^{requests}
petitioners' ~~contentions~~ are based on a potential lack of compliance with existing requirements and guidance, and do not provide a basis for amending the regulation. Appendix 4 in NUREG-0654, discusses "special facility populations." Daycare centers and nursery schools fall under the definition of a "special facility populations" and as such, it is the responsibility of state and local governments to ensure that these populations are included in the offsite emergency response plans. The staff does not believe that such unnecessary regulatory action, without adequate justification, would ensure openness in the NRC regulatory process. It should be noted, however, that 3000 members of the public co-signed the original petition for rulemaking. Additionally, 410 members of the public signed letters supporting the petition. This amount of public support reinforces the importance of NRC and FEMA's continued commitment ~~to~~ providing protection for the public in the event of an emergency which has always included daycare centers and nursery schools.

4. Ensure that NRC Actions Are Effective, Efficient, Realistic and Timely: The proposed revisions would decrease efficiency and effectiveness because current NRC and FEMA regulations and guidance already provide for many of the petition requests. Amending the regulations would require licensees and state and local governments to generate additional and more prescriptive information in their emergency plans, and the NRC and FEMA staffs would need to evaluate the additional information. ~~The NRC staff believes that this additional information would be of no safety value.~~ The additional NRC staff and licensee effort would not improve efficiency or effectiveness. In addition, the NRC resources expended to promulgate the rule and supporting regulatory guidance would be significant with little return value.

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

Reason for Denial

The Commission is denying the petition for rulemaking (PRM-50-79) submitted by Mr. Lawrence T. Christian, et. al. Current NRC requirements and NRC and FEMA guidance, provide reasonable assurance of adequate protection of all members of the public, including children attending daycare centers and nursery schools, in the event of a nuclear power plant incident. Many of the specific requests of the petitioner are either already covered by regulations and/or guidance documents or are inappropriate for inclusion in NRC regulations due to their very prescriptive nature. The Commission does believe, however, that information obtained during the review of the petition does raise questions about local implementation of relevant requirements and guidelines. Accordingly, the petition is denied and forwarded to

~~FEMA for review and investigation.~~ NRC staff met with FEMA officials to assure an understanding of this issue for consideration by FEMA as reflected in separate letters to the petitioner and TMI-Alert Chairman, ERIC Epstein dated respectively, March 23, 2005 and March 24, 2005. ⁽²⁾ Copies of those letters are available through the NRC's ADAMS document system and can be located using the accession numbers MLO505 90344 and MLO505 90357, respectively. The NRC staff will continue to dialogue with FEMA to ensure emergency planning exercises are appropriately focused and provide adequate assurance regarding compliance with NRC and FEMA regulations and guidance.

② FEMA did participate in a May 3, 2005 Emergency Planning exercise at TMI. NRC understands that during this exercise FEMA reviewed aspects of emergency planning involving nurseries and day care centers. No deficiencies were identified by FEMA during the exercise and NRC understands that FEMA's final report on the exercise is expected later this year.

NOTE: ADJUDICATORY
MATERIAL - LIMITED TO
AUTHORIZED COMMISSION
ADJUDICATORY EMPLOYEES
UNLESS THE COMMISSION
DETERMINES OTHERWISE

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

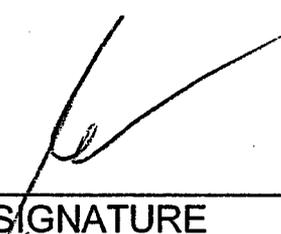
FROM: **COMMISSIONER JACZKO**

SUBJECT: **SECY-05-0045 - DENIAL OF PETITION FOR
RULEMAKING TO REVISE 10 CFR PART 50 TO
REQUIRE OFFSITE EMERGENCY PLANS TO
INCLUDE NURSERY SCHOOLS AND DAY CARE
CENTERS**

Approved _____ Disapproved X Abstain _____

Not Participating _____

COMMENTS: See attached comments.



SIGNATURE

12/20/05

DATE

Entered on "STARS" Yes X No _____

**Commissioner Jaczko's Comments on Secy-05-0045
Denial of a Petition for Rulemaking to Revise 10CFR Part 50 to Require Offsite
Emergency Plans to Include Nursery Schools and Day Care Centers**

REVISED VOTE

In my initial vote I supported denying a petition for rulemaking to require offsite emergency plans to include nursery schools and daycare centers. I based this decision on my understanding that there were no systemic problems with emergency planning regulations and subject to a retesting of the emergency plans around Three Mile Island (TMI) that would resolve lingering concerns about site-specific notification and evacuation planning.

The Commission is now approaching the end of its decision-making process and a majority of the Commission has chosen to pursue what I view as an overly cautious approach to ensuring there are no problems with offsite planning around TMI – requesting that the staff simply pursue further discussions with the Federal Emergency Management Agency (FEMA).

I too value the agency's cooperative relationship with FEMA on emergency preparedness issues. I believe, however, that the NRC has the ultimate authority and responsibility to pursue direct and prompt action to eliminate the doubts about an assurance of adequate protection that have been identified by the petitioners and the NRC staff. The Commission and the public should not be left to wonder if alert and notification procedures for daycare centers and nursery schools are in place, transportation resources would be available for evacuating these facilities, and reception and care centers are arranged. After considering the weaknesses in our nation's emergency management system that have been revealed by Hurricanes Katrina and Rita, I now also believe that the NRC should take action to determine if a generic issue exists by re-assessing the adequacy of radiological emergency plans for all special need populations within nuclear power plant licensee Emergency Planning Zones.

Therefore, in the absence of clear Commission direction to the staff that would empower them to ensure there are no problems with emergency planning around TMI and in light of our nation's recent experiences with natural disasters, I see no recourse but to register my concern by changing my original vote and approving the petition for rulemaking.



Gregory B. Jaczko 12/20/07
Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: **SECY-05-0045 - DENIAL OF A PETITION FOR
RULEMAKING TO REVISE 10 CFR PART 50 TO
REQUIRE OFFSITE EMERGENCY PLANS TO
INCLUDE NURSERY SCHOOLS AND DAY CARE
CENTERS (PRM-50-79)**

Approved Disapproved Abstain

Not Participating

COMMENTS:

I approve the proposed denial of the Petition for Rulemaking, and support the editsto the Federal Register Notice and the proposed letter to the Petitioners in Commissioner McGaffigan's vote.



SIGNATURE

6/29/05

DATE

Entered on "STARS" Yes No