

10 CFR Part 50

Emergency Planning—Medical Services

AGENCY: Nuclear Regulatory Commission.

ACTION: Statement of Policy on Emergency Planning Standard 10 CFR 50.47(b)(12).

SUMMARY: The Nuclear Regulatory Commission ("NRC" or "Commission") believes that 10 CFR 50.47(b)(12) ("planning standard (b)(12)") requires pre-accident arrangements for medical services (beyond the maintenance of a list of treatment facilities) for individuals who might be severely exposed to dangerous levels of offsite radiation following an accident at a nuclear power plant. While concluding that planning standard (b)(12) requires such additional arrangements, the Commission leaves to the informed judgment of the NRC staff, subject to general guidance from the Commission, the exact parameters of the minimally necessary arrangements for medical services. To fulfill this mandate the staff (and FEMA) will issue appropriate guidance to licensees, applicants, and state and local governments.

The United States Court of Appeals for the District of Columbia ("Court") vacated and remanded a previous Commission interpretation of planning standard (b)(12) which required only the development and maintenance of a list of treatment facilities on which post-event, *ad hoc* arrangements for medical treatment could be based. *GUARD v. NRC*, 753 F.2d 1144 (D.C. Cir. 1985). Pending final Commission action in response to the *GUARD* remand, the Commission issued a statement of interim guidance which permitted, pursuant to 10 CFR 50.47(c)(1), the issuance of full power licenses where the applicant satisfied the requirements of planning standard (b)(12) as interpreted by the Commission prior to *GUARD*, and where the applicant committed to full compliance with the Commission's final response to the *GUARD* remand. The Commission's prior interim guidance will continue to govern the issuance of full power licenses until issuance and implementation of the NRC staff's specific guidance on this matter, at which point the new policy will apply.

EFFECTIVE DATE: September 17, 1986.

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SUPPLEMENTARY INFORMATION:

I. Introduction

In the wake of the Three Mile Island accident in 1979, the Nuclear Regulatory Commission ("NRC" or "Commission") promulgated regulations requiring its licensees and applicants for licenses to operate commercial nuclear power reactors to develop plans for emergency responses to accidents at their facilities. Among those requirements was 10 CFR 50.47(b)(12) ("planning standard (b)(12)"), which provides:

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

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

In *Southern California Edison Company, et al.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-83-10, 17 NRC 528 (1983) ("SONGS" decision"), the Commission itself faced for the first time the question whether planning standard (b)(12) applied to members of the public who were exposed to offsite radiation following an accident at a nuclear power facility but were not otherwise injured, and if so to what extent. In considering this question, the Commission sought the views of the parties in the SONGS proceeding, reviewed the principal purposes of the planning standard, analyzed the likelihood of serious exposures to the public requiring emergency medical treatment, and evaluated the type of emergency treatment likely to be required. Based on this review, the Commission concluded as a generic matter that: (1) Planning standard (b)(12) applied to individuals both onsite and offsite; (2) "contaminated injured individuals" was intended to include seriously irradiated members of the public as well as members of the public who are not seriously irradiated but also are traumatically injured from other causes and radiologically contaminated; and (3) Adequate, post-accident arrangements for necessary medical treatment of exposed members of the public could be made on an *ad hoc* basis if emergency plans contained a list of local treatment facilities.

On appeal, the United States Court of Appeals for the D.C. Circuit concluded that the Commission had not reasonably interpreted planning standard (b)(12) when it generically found that a pre-accident list of treatment facilities constituted "arrangements" for post-accident medical treatment. *GUARD v. NRC*, 753 F.2d 1144 (D.C. Cir. 1985). For this reason, the Court vacated and remanded that part of the Commission's SONGS decision that had interpreted planning standard (b)(12) to require only the preparation of a list of local

treatment facilities. However, in doing so, the Court made clear that the Commission had on remand, in its sound discretion, flexibility in fashioning a reasonable interpretation of planning standard (b)(12).

II. Arrangements Beyond A List Of Treatment Facilities Required

When originally faced with the question whether the phrase "contaminated injured individuals" was intended to encompass, *inter alia*, members of the public who, as a result of an accident, were exposed to dangerous levels of radiation, the Commission found no explicit and conclusive definition of the phrase in the regulation itself or its underlying documents. Nonetheless, the Commission concluded that the prudent risk reduction purpose of the Commission's regulations required interpreting planning standard (b)(12) to apply to such offsite exposed individuals, given the underlying assumption of the NRC's emergency planning regulations that a serious accident could occur and the Commission presumption that such an accident could result in offsite individuals being exposed to dangerous levels of radiation (a presumption concurred in by the Federal Emergency Management Agency). After reconsideration of this matter following the *GUARD* decision, the Commission has decided to re-affirm this prior interpretation of planning standard (b)(12).

However, the Commission has come to a different result with respect to the minimum arrangements necessary for individuals who might be seriously exposed, but not otherwise injured, in a radiologic emergency. In originally resolving the scope of arrangements issue, the Commission focused on the particular needs of offsite exposed individuals for *emergency* medical treatment of their radiation injury. In this fashion, the Commission made a distinction between the need for immediate or near-term medical care, which was in its view the goal of planning standard (b)(12), and the need for long-term medical care. As to exposed individuals, the Commission found that:

the special hazard is posed by the radiation exposure to the patient. The nature of radiation injury is that, while medical treatment may be eventually required in cases of extreme exposure, the patients are unlikely to need emergency medical care (footnote omitted). The non-immediacy of the treatment required for radiation-exposed individuals provides onsite and offsite authorities with an additional period of time to arrange for the required medical service. (17 NRC 535-36.)

From this, the Commission reasoned that the long-term treatment needs of exposed individuals could be adequately met on *ad hoc* basis.

After reconsideration in light of the *GUARD* decision, the Commission has concluded that some additional planned arrangements beyond the development of a list of treatment facilities are necessary to provide additional assurance of effective management of emergency medical services in the hours or days following a severe accident. However, the Commission continues to believe that the long-term treatment needs of exposed individuals can be adequately met on *ad hoc* basis.

The minimally necessary arrangements for the person that may be exposed need not be elaborate. As previously stated by the Commission, "[i]t was never the intent of the regulations to require directly or indirectly that state and local governments adopt extraordinary measures, such as construction of additional hospitals or recruitment of substantial additional medical personnel, just to deal with nuclear plant accidents." 17 NRC at 533. Rather, the Commission believes that satisfactory arrangements should include (1) a list of local or regional medical treatment facilities and transportation providers appropriately annotated to show their capacities, special capabilities or other unique characteristics, (2) a good faith reasonable effort by licensees or local or state governments to facilitate or obtain written agreements with the listed medical facilities and transportation providers, (3) provision for making available necessary training for emergency response personnel to identify, transport, and provide emergency first aid to severely exposed individuals, and (4) a good faith reasonable effort by licensees or state or local governments to see that appropriate drills and exercises are conducted which include simulated severely-exposed individuals. If good faith efforts are not successful in a particular case, the licensee shall provide or arrange for adequate compensatory measures, consistent with the Commission's intent to limit the need for extraordinary measures noted above. The compensatory measures must be approved by NRC. This level of planning would help (1) provide additional assurance of the cooperation of medical facilities, (2) ensure proper training, (3) ensure the availability of transportation, and (4) demonstrate a capability to provide necessary services through drills and exercises.

The Commission has directed the staff to develop, consistent with this interpretation of the planning standard, detailed and specific guidance on the

nature of the medical services to be available to exposed individuals and on the application of planning standard (b)(12) to NRC licensees and applicants for licenses to operate commercial nuclear power reactors. The Commission has also directed the staff to consider whether and under what criteria it is necessary or appropriate for the staff to verify the appropriateness of training, and drills or exercises associated with the handling of severely exposed persons.

The Commission has determined that the arrangements contemplated under this Statement of Policy are the minimum required by a reasonable reading of planning standard (b)(12). Accordingly, although implementation of this reading of the standard will entail some additions to, and some modifications of, the emergency procedures and organizations for which licensees are ultimately responsible, the requirements of the backfit rule, 10 CFR 50.109 (1986), for a cost-benefit analysis and a finding that the costs of the modifications are justified by a substantial increase in safety are not applicable, since these modifications fall under the backfit rule's exception for modifications necessary to bring facilities into compliance with a rule of the Commission. See 10 CFR 50.109 (a)(2) and (a)(4) (1986). The analysis which the backfit rule requires be done to justify the application of any of its exception provisions constitutes the core of this Statement of Policy. See *Id.*

III. Interim Guidance

In its prior statement of policy, the Commission identified three factors which justified an interim policy of granting applicants for full-power license an equitable exception to the requirements of planning standard (b)(12) under 10 CFR 50.47(c)(1) where the applicant satisfied the requirements of planning standard (b)(12) as interpreted by the Commission prior to the *GUARD* decision and committed itself to full compliance with any additional requirements imposed by the Commission in response to the *GUARD* remand. Statement of Policy on Emergency Planning Standard 10 CFR 50.47(b)(12), 50 FR 20891 (May 21, 1985). The three factors were: (1) the possibility that the scope of planning standard (b)(12) would be limited; (2) the possibility that delay in compliance with the post-*GUARD* requirements could be found to be insignificant due to the low probability of accidents during the interim period; and (3) the possibility of "other compelling reasons" justifying a brief exception where applicants had relied in good faith upon prior Commission interpretation of planning standard (b)(12).

In this Statement of Policy interpreting

planning standard (b)(12) the Commission directs the NRC staff to develop (in consultation with FEMA) and issue by 11/17/86 appropriate detailed guidance on the exact contours of the necessary arrangements consistent with the Commission's determination that planning standard (b)(12) require arrangements for medical services (beyond the maintenance of a list of pre-existing treatment facilities) for offsite exposed individuals. The Commission believes that the last two factors, discussed in detail in its May 21, 1985 Statement of Policy, continue to justify reliance on the interim guidance for the period necessary for the NRC staff to issue and licensees, applicants, and state and local governments to implement the detailed guidance. Therefore, until appropriate detailed guidance consistent with this policy statement is issued and implemented, the Licensing Boards may continue to reasonably find that any hearing regarding compliance with 10 CFR 50.47(b)(12) shall be limited to issues which could have been heard before the Court's decision in *GUARD v. NRC*.

Dated at Washington, DC, this 12th day of September, 1986.

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