

RULEMAKING ISSUE NOTATION VOTE

March 11, 2005

SECY-05-0045

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operations

SUBJECT: 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)

PURPOSE:

To obtain Commission approval for denial of a petition for rulemaking to amend the emergency planning regulations in 10 CFR 50, "Domestic Licensing of Production and Utilization Facilities."

SUMMARY:

Mr. Lawrence T. Christian and 3,000 co-signers submitted a petition for rulemaking dated September 4, 2002, requesting that the NRC amend its regulations regarding offsite state and local government emergency plans for nuclear power plants. They want to ensure that all daycare centers and nursery schools in the vicinity of nuclear power plants are properly protected in the event of a radiological emergency. The staff reviewed the petition and determined that the current regulations and guidance along with state and local government established emergency plans provide reasonable assurance of adequate protection of all members of the public, including children in nursery schools and daycare centers. The staff requests Commission approval to deny the petition. The staff has forwarded the petitioners' concerns to FEMA for review to determine if there are implementation problems.

BACKGROUND:

The petition was docketed by the NRC on September 23, 2002, and has been assigned Docket No. PRM-50-79.

CONTACT: Michael T. Jamgochian, NRR/DRIP
301-415-3224

NOTE: TO BE RELEASED TO THE PUBLIC 5 WORKING DAYS AFTER THE LETTER TO THE PETITIONER IS DISPATCHED.

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) 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 (58 FR 47966, September 9, 1993). FEMA's regulations were further amplified by FEMA Guidance Memorandum (GM) EV-2, "Protective Actions for School Children" and in FEMA-REP-14, "Radiological Emergency Preparedness Exercise Manual."

DISCUSSION:

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. In accordance with 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." 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," 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 EV2, "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.

The Petitioners' Request:

This petition for rulemaking (PRM-50-79) generally requested 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 offsite emergency plans of all NRC nuclear power facility licensees. More specifically, the petition requests that the NRC amend its regulations to ensure that all children attending daycare centers 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 nursery school and daycare evacuation vehicles, and the establishment of 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 center 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.

Analysis Of Requested Action:

The staff has evaluated the advantages and disadvantages of the rulemaking requested by the petition with respect to the five strategic goals of the Commission as 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 taking 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

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 of providing protection for the public in the event of an emergency which has always included daycare centers and nursery schools. When the protection is not provided, whether on a local or national level the public welcomes the opportunity to participate in a rulemaking that would provide the necessary protection of children within the EPZ.

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.

Staff Conclusions

The staff believes that emergency planning requirements, as currently codified, provide reasonable assurance of adequate protection of all members of the public, including children in nursery schools and daycare centers. The very specific requests of the petitioners are either already covered by regulations and/or guidance documents or are inappropriate for inclusion in NRC regulations due to their very prescriptive nature or because FEMA has indicated that they are unnecessary. The staff believes, however, that the petition does raise potential questions about local implementation and compliance with relevant FEMA requirements and guidelines. The staff considers this petition as identifying potential implementation problems, and questioning whether the current requirements and guidelines are being complied within the petitioners' state and local area. Accordingly, the staff recommends that the petition be denied, but has forwarded the petition to FEMA for a review for compliance with established

requirements and guidance. FEMA's response to NRC on the petitioners' concerns are provided in Attachment 3.

RECOMMENDATION:

That the Commission:

- (1) Approve the denial of the subject petition for rulemaking and publication of the Notice (Attachment 1) of the denial.
- (2) Note that:
 - a. a letter is attached for the Secretary's signature (Attachment 2), informing the petitioners of the Commission's decision to deny the petition.
 - b. the appropriate Congressional committees will be informed.
 - c. Attachment 4 is provided as additional information for Commission consideration relative to the petitioner's implementation concerns.

COORDINATION:

The Office of the General Counsel has no legal objection to the denial of this petition. FEMA concurs with the denial of the petition as presented in this package.

/RA/
Luis A. Reyes
Executive Director
for Operations

- Attachments: 1. *Federal Register* Notice
2. Letter to Petitioner
3. FEMA Responses, to Date, on Petitioner's Concerns
4. Comments on Implementation

FEDERAL REGISTER NOTICE

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)			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 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...” 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 is adequately addressed in current regulations and guidance.
 - 4 Letters from licensees or companies that own nuclear utilities, to deny the petition.
 - 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 petitions 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 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

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 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. 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 provisions 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.

- 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. 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.

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:

- C Identification of offsite organization and state and local government officials responsible for both planning and effecting the protective action.
- C 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.

- C If parts of the institution-specific information apply to many or all schools, then the information may be presented generically.
- C Time frames for implementing the protective actions.
- C 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. 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

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. 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.

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

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 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 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.

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

Petition Letter

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, your petition is denied and forwarded to FEMA for investigation.

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 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

L. Christian

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



FEMA

APR 29 2004

Mr. Nader L. Mamish
Director, Emergency Preparedness
Project Office
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Mr. Mamish:

This is in response to your letter dated March 11, 2004, requesting assistance to address concerns regarding emergency plans and procedures for nursery schools around the Three Mile Island (TMI) Nuclear Station, located in the Commonwealth of Pennsylvania.

Issue 1.

The joint Federal Emergency Management Agency (FEMA) and Nuclear Regulatory Commission (NRC) guidance document, NUREG-0654/FEMA-REP-1, Criteria for Preparation and Evaluation of Radiological Emergency response Plans and Preparedness in Support of Nuclear Power Plants, Planning Standard J, Protective Response and Appendix 4.II.C, provides criteria for each State and local organization to establish a capability for implementing protective actions for persons. This includes school children, within the plume exposure pathway emergency planning zone (EPZ) in the event such protective actions are needed in response to a radiological emergency at a commercial nuclear power plant. The need to address this issue of protective actions for school children stemmed from both the lack of detailed guidance on this issue and the expressed interest for such guidance from the public interest groups, State and local government officials and Federal Regional officials.

FEMA issued Guidance Memorandum (GM) EV-2, on November 13, 1986, Guidance Protective Actions for School Children (Enclosed). GM EV-2 is intended to aid Federal officials in evaluating emergency plans and preparedness for school children during a radiological emergency. This guidance is also intended to be used by State and local government officials and administrators of public and private schools, including licensed and government supported pre-schools and day-care centers, for developing emergency response plans for protecting the health and safety of students. The primary method for protecting school children is evacuation to relocation centers. Prompt evacuation is not advisable during exceptional situations such as having to drive through a radioactive plume or into a severe blizzard. Under these circumstances, school children should be temporarily sheltered and subsequently evacuated, if need be, as soon as conditions permit.

ATTACHMENT 3

EMA letter
to NRC

Issue 2.

Pre-school children are NOT left without designated Reception Centers outside of the EPZ. Reception Centers are designated for the general public of which pre-school children are considered a part.

Issue 3.

Parents should pre-arrange with daycare centers and nursery schools for procedures to follow during both routine and emergency situations regarding the safety and care of their children.

Issue 4.

As with issue 3, above, parents should review with daycare centers and nursery schools procedures and plans for the safety and protection of their children in not only radiological emergencies but all types of hazards.

Issue 5.

FEMA or NRC has no authority over child safety seat belt requirements.

Issue 6.

Again, as in issue 3 and 4 above, parents should review procedures with the daycare center and nursery school for picking up their children in cases of emergency.

Issue 7.

Daycare centers and nursery schools can be included in annual site inspections by local authorized government agencies if they so request. Daycare centers and nursery schools are considered private businesses and as such are not required by regulation to submit to annual site inspections during radiological emergency preparedness exercises.

Issue 8.

Again, as in issue 3, 4 and 6 above, parents should review procedures with the daycare center and nursery school for the care, accountability and safety of their children in cases of emergency.

Issue 9.

Potassium iodide (KI) tablets are available to the general public, and as with any medication, parents should review procedures with the daycare center and nursery school regarding the availability and use of any medications for their children.

Attachment 3

Issue 10.

As in issue 7 above, daycare centers and nursery schools are considered private businesses and as such there is no regulatory requirement to provide radiological emergency preparedness training for operators and their employees. However, training materials are available in local phone books and emergency management offices.

Issue 11.

As in issue 3, 4, 6 and 8 above, parents should discuss procedures with daycare centers and nursery schools regarding the care, accountability and safety of their children during an emergency.

Issue 12.

As with any emergency impacting the general public, "911" information lines are publicized and available for obtaining information, to include designated reception centers, if appropriate.

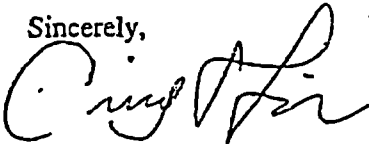
Issue 13.

The Emergency Alerting System (EAS) is limited to a two-minute message to alert the general public of an emergency and therefore would not be able to contain information specific to daycare centers and nursery schools. As a general consideration, the plans should contain a provision for notifying parents and guardians (e.g., through the EAS) of the status and location of their children during a radiological emergency.

Please keep in mind that daycare centers and nursery schools are considered private businesses in the Commonwealth of Pennsylvania as opposed to elementary, middle and high schools that are considered public institutions. As was stated in a letter dated January 10, 2003, from the Acting Director of the Pennsylvania Emergency Management Agency to the NRC, "Parents are legally required to send their children to public schools unless they opt to enroll them in private institutions. The use of private day-care facilities is voluntary on the part of the parents. There is no legal requirement to send children to them." However, the Commonwealth of Pennsylvania Department of Public Welfare issued a bulletin early this year requiring daycare centers to develop an emergency operations plan (EOP). This requirement takes effect six months from the date of the bulletin

Our Regional Office has investigated this allegation. If you have any further questions regarding this issue, please feel free to contact me at (202) 646-3664.

Sincerely,

for 

Vanessa E. Quinn
Chief
Radiological Emergency Preparedness Section

Enclosure

ATTACHMENT 3

3

JUL 29 2004



FEMA

Mr. Nader L. Mamish
Director, Emergency Preparedness
Directorate
Office of Nuclear Security and Incident Response
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Mr. Mamish:

This is in response to your letter dated June 8, 2004, requesting additional assistance to address concerns regarding emergency plans and procedures for nursery schools around the Three Mile Island (TMI) Nuclear Station, located in the Commonwealth of Pennsylvania. The joint Federal Emergency Management Agency (FEMA) and Nuclear Regulatory Commission (NRC) guidance document, NUREG-0654/FEMA-REP-1, Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants, Planning Standard J, Protective Response and Appendix 4.II.C, provides criteria for each State and local organization to establish a capability for implementing protective actions for persons in response to a radiological emergency at a commercial power plant. This includes school children within the plume exposure pathway Emergency Planning Zone (EPZ). The need to address this issue of protective actions for school children stemmed from both the lack of detailed guidance on this issue and the expressed interest for such guidance from the public interest groups, State and local government officials and Federal Regional officials.

FEMA issued Guidance Memorandum (GM) EV-2, on November 13, 1986, Guidance for Protective Actions for School Children. GM EV-2 is intended to aid Federal officials in evaluating emergency plans and preparedness for school children during a radiological emergency. This guidance is intended to be used by State and local government officials and administrators of public and private schools, including licensed and government supported pre-schools and day-care centers, to develop emergency response plans to protect the health and safety of students. The primary method for protecting school children is evacuation to relocation centers. Prompt evacuation is not advisable during exceptional situations such as having to drive through a radioactive plume or into a severe blizzard. Under these circumstances, school children should be temporarily sheltered and subsequently evacuated, if need be, as soon as conditions permit.

The issues identified in the letter from the NRC are addressed in the following paragraphs.

Attachment 3

Issue 1.

Pre-school children are NOT left without designated Reception Centers outside of the EPZ. Reception Centers are designated for the general public of which pre-school children are considered a part.

Issue 2.

Parents should pre-arrange with daycare centers and nursery schools for procedures to follow during both routine and emergency situations regarding the safety and care of their children. The Commonwealth of Pennsylvania Department of Public Welfare issued a bulletin on December 27, 2003, requiring daycare centers to develop an Emergency Operating Procedure (EOP). The Bulletin and Draft EOP for Day Care Centers are enclosed. The enclosed Draft EOP for Nursery Schools delineates a listing of transportation providers and contact lists for drivers.

Issue 3.

As with issue 2, above, parents should review with daycare centers and nursery schools procedures and plans for the safety and protection of their children in not only radiological emergencies but all types of hazards. The Commonwealth of Pennsylvania Department of Public Welfare issued a bulletin on December 27, 2003, requiring daycare centers to develop an EOP. The enclosed Draft EOP for Nursery Schools delineates a listing of transportation providers and contact lists for drivers.

Issue 4.

FEMA or NRC has no authority over child safety seat belt requirements.

Issue 5.

Again, as in issue 2 and 3 above, parents should review procedures with the daycare center and nursery school for picking up their children in cases of emergency.

Issue 6.

Daycare centers and nursery schools can be included in annual site inspections by local authorized government agencies if they so request. Daycare centers and nursery schools are considered private businesses and as such are not required by regulation to submit to annual site inspections during radiological emergency preparedness exercises.

Issue 7.

FEMA or NRC has no authority over identification card and fingerprinting for children.

ATTACHMENT 3

Issue 8.

Potassium iodide (KI) tablets are available to the general public, and as with any medication, parents should review procedures with the daycare center and nursery school regarding the availability and use of any medications for their children. The decision for the administration of KI is the responsibility of the State.

Issue 9.

As in issue 6 above, daycare centers and nursery schools are considered private businesses and as such there is no regulatory requirement to provide radiological emergency preparedness training for operators and their employees. However, training materials are available in local phone books and emergency management offices.

Issue 10.

As in issue 2, 3, 5 and 7 above, parents should discuss procedures with daycare centers and nursery schools regarding the care, accountability and safety of their children during an emergency.

Issue 11.

As with any emergency impacting the general public, "911" information lines are publicized and available for obtaining information, to include designated reception centers, if appropriate.

Issue 12.

The Emergency Alerting System (EAS) is limited to a two-minute message to alert the general public of an emergency and therefore would not be able to contain information specific to daycare centers and nursery schools. As a general consideration, the plans contain a provision for notifying parents and guardians (e.g., through the EAS) of the status and location of their children during a radiological emergency.

Issue 13.

Please keep in mind that daycare centers and nursery schools are considered private businesses in the Commonwealth of Pennsylvania as opposed to elementary, middle and high schools that are considered public institutions. There is no legal requirement to send children to them. However, the Commonwealth of Pennsylvania Department of Public Welfare issued a bulletin on December 27, 2003, requiring daycare centers to develop an EOP.

ATTACHMENT 3

Our Regional Office has investigated this allegation and provided consensus on this response. If you have any further questions regarding this issue, please feel free to contact me at (202) 646-3664.

Sincerely,



Vanessa E. Quinn

Chief

Radiological Emergency Preparedness Section

Enclosures

ATTACHMENT 3



PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY
2605 Interstate Drive
Harrisburg, Pennsylvania 17110-9364



July 30, 2004

Mr. Larry Christian
133 Pleasantview Terrace
New Cumberland, PA 17074

Dear Mr. Christian:

We received your letter inquiring about the provisions that are made in Pennsylvania law and regulation to protect children in day care facilities. As you know, last year the Pennsylvania Department of Public Welfare and this agency initiated actions to address concerns regarding comprehensive emergency planning and preparedness in day care centers. The Department of Public Welfare (which regulates and licenses day care centers) promulgated regulations that require all centers under their purview to develop more stringent emergency preparedness plans. Further, these day care facility plans will be part of the state's regular inspections of the facilities.

In addition, earlier this year the Pennsylvania General Assembly passed Act 2004-73 which codified these regulatory requirements for certain state licensed day care centers and nursery schools. This law, while a good start, does not go far enough to protect those in the care of others. It is important to note that, while not all state licensed or regulated day care centers were included in this legislation, it is the position of this Administration that sufficient legal authority exists for the Department to enforce the existing regulatory order statewide.

In your letter, you grouped your questions into seven categories. Although my responses may prove repetitive, it is probably best to address the questions individually:

(1) Shelter of children during an emergency.

Are child care facilities being provided these shelters by county emergency management officials? Child care facilities are, for the most part, private business entities who, in conjunction with the parents, should assume responsibility for the safety of their charges. Local government will not treat these businesses any differently than it does any other citizen. Especially in rural areas, municipal government simply may not have the resources to provide shelter. In so far as municipal shelters are available, child care providers are encouraged to use them.

On the other hand, "Immediate shelter" and "in place shelter" as discussed in the plan must be within the facility. As stated in the plan, these are to be used when it is unsafe to go outside (severe weather, hazardous materials in the atmosphere, civil disturbance in the area, etc.) Under these circumstances, any kind of government-provided shelter is out of the question.

Attachment 4

What are the minimum distances from the EPZ that are going to be required? The daycare plan that is provided on the PEMA website is general, and was never meant to supersede other requirements. Facilities located within the 10-mile "emergency planning zone" of a nuclear power plant should comply with the planning constraints that come with living in that area, and identify a relocation center that's outside the EPZ.

How and by whom are these arrangements being secured? Child care facilities are, for the most part, private business entities who should assume responsibility for their charges along with the parents of the children.

Will public school officials be assisting child care facilities needs by making their relocation centers available for this purpose? In many cases, municipal governments already have agreements with school districts to use their facilities. It would make sense for the day care provider to utilize this if it is available. If the shelters that the municipal government has planned are for some reason unacceptable to the day care provider, that provider may make whatever agreements (s)he feels are necessary.

Are letters of agreement needed/being issued so that there is a record of this for all parties showing agreement to provide these services? There is a place in the plan (Part I, Paragraph 7) called "CONCURRENCE WITH OUTSIDE RESOURCES" where resource providers can sign that they are aware of the requirements placed on them by the plan.

(2) Evacuation of children from the facility.

Are child care facilities being provided transportation by county emergency management officials? Child care facilities are, for the most part, private business entities who should assume responsibility for their charges. As mentioned in the Day Care facilities planning guide that's on PEMA's website "...the municipal emergency management agency may be able to help, but it won't be able to guarantee that you will remain in one group, thus complicating your accountability problems." Child day care providers should coordinate with municipal government and decide whether to use government-provided resources, or to make separate arrangements.

How and by whom are these arrangements being secured? Care of their charges is ultimately the responsibility of the day care provider and the parents of the children.

What special provisions are being made to safely evacuate newborns and infants? Consideration for the special needs of specific charges should ultimately be the responsibility of the business owner and the parents of the children.

Will public school officials be assisting child care facilities needs by making their transportation available for this purpose? In many cases, school district-owned transportation resources are a major part of municipal evacuation plans. Day care providers should coordinate with local emergency planning agencies to determine if they will take advantage of these plans. In those cases where the municipal plans are unacceptable, the day care providers should make whatever

arrangements they feel are necessary to discharge their responsibility for their charges.

Are letters of agreement needed/being issued so that there is a record of this for all parties showing agreement to provide these services? There is a place in the plan (Part I, Paragraph 7) called "*CONCURRENCE WITH OUTSIDE RESOURCES*" where resource-providers can sign that they are aware of the requirements placed on them by the plan.

(3) Emergency Notification.

Are child care facilities going to be provided notification by emergency management officials during an emergency? Municipalities provide for notification of the general public through the emergency alert system or other means. Some municipalities that contain special hazards include a list of "special facilities" (i.e.: day care homes/centers) that will be notified directly.

Day care providers should find what systems are used in their community, and monitor those systems. We suggest that they use a NOAA weather alert radio and also, obviously, tune to the Emergency Alert System (EAS).

Will emergency management officials be deciding what protective actions each child care facility will take, or is it up to the facility director? If time allows, municipal officials will issue a protective action decision. However, localized emergencies or severe time constraints may dictate that the day care facility operator must choose the most prudent course of action. The sample plan on PEMA's website lists considerations (Part II, Checklist A) that will help the day care provider to make that decision.

How and by whom are these arrangements being secured? As a private business entity, the day care providers, in conjunction with the parents of the children, are responsible for the safety of their charges.

(4) Identification Systems for preschoolers.

What provisions are being required for identification systems for preschool children who are to be relocated during an emergency? This plan creates no additional procedures for identification. The same procedures that are used for normal field trips should suffice. If normal accountability procedures are unacceptable, the day care providers should make whatever arrangements they feel are necessary to discharge their responsibilities. As a caution, it is not recommended to create special procedures for use only during emergencies. New procedures only add to the confusion and the stress placed on the children.

How and by whom are these arrangements being secured? As a private business entity, the day care providers, in conjunction with the parents of the children, are responsible for the safety of their charges.

(5) KI Tablets.

What provisions are being secured for providing KI tablets for child care facilities? The distribution and use of Potassium Iodide (KI) is voluntary. If the day care provider chooses to

distribute KI to its charges (after obtaining the same written authorization from the child's parents as for any other pharmaceutical) it can obtain the pills from the Pennsylvania Department of Health. The commonwealth will conduct an annual KI awareness and distribution campaign.

How and by whom are these arrangements being secured? As a private business entity, the day care providers, in conjunction with the parents of the children, are responsible for the safety of their charges.

(6) Problems getting cooperation and securing provisions outlined with Title 55.

What recourses are child care facilities being provided if they are being denied or having trouble securing outside transportation, relocation and sheltering assistance? As a private business entity, the day care providers are responsible for the safety of their charges. Local governments will provide to them the same levels of protection that are provided to private citizens and other businesses in the community. These must be constrained by the levels of resources available to the municipality.

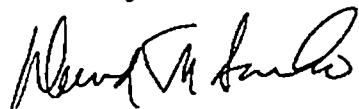
Title 55 does not place any additional requirements on local government. It simply requires that day care providers commit to writing those plans that they have to continue to provide care for children during time of emergency.

(7) Nursery Schools.

Are the protective actions listed in PA bulletin Title 55 required for all child care facilities including those regulated by the PA Department of Education like public and private nursery schools? NO. Those facilities are subject to other regulations promulgated by the state Department of Education. The Department of Education has not announced how it will address Act 2004-73 requirements.

I hope that we've provided adequate answers to your questions. If you have further questions, please feel free to contact me.

Sincerely



David M. Sanko
Director

DMS:JJC



1

DOCKETED
USNRC

December 10, 2002 (4:02PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

10

DOCKET NUMBER
PETITION FILE PRM 50-79
(67FR 66588)

Office of the Mayor
The City of Harrisburg
City Government Center
10 North Market Square
Harrisburg, PA 17101-1678

Stephen R. Reed
Mayor

(717) 255-3040

December 3, 2002

Ms. Annette Vietta-Cook, Secretary
U.S. Unclear Regulatory Commission
Washington, D.C. 20555-001

Re: Petition for Rulemaking filed
by Lawrence T. Christian
(Docket No. PRM-50-79)

Attn: Rulemakings and Adjudications Staff

Dear Ladies and Gentlemen:

This serves to exercise our right to comment regarding the Rulemaking filed under Docket No. PRM-50-79, for which the public comment period ends January 15, 2003.

The City of Harrisburg hereby endorses and supports the proposed rule, the effect of which would be to require that nursery schools and daycare centers be included as a required addition to Radiological Emergency Readiness Plans that are federally mandated and required for municipalities and other governmental entities within the radius area of licensed nuclear power stations.

The exclusion of such facilities in present Radiological Emergency Plans is an omission that is certain to create confusion and chaos in the event that an evacuation would ever be ordered in one of the affected evacuation zones near to a nuclear power station. Parents and others would be attempting to reach the nursery schools and daycare centers, which would almost certainly delay any prospect of their orderly evacuation. Further, nursery schools and daycare centers have thus far generally not put into place any evacuation plan, which means there would be on-site confusion regarding the safety of the children entrusted to these facilities.

It makes common sense to specifically include nursery schools and daycare centers as part of a Radiological Emergency Plan and the proposed Rule to do so is therefore an appropriate addition to such required planning.

Yours sincerely,

Stephen R. Reed
Mayor

SRR:lmh

Template = SECY-067

SECY-02

ATTACHMENT 4



PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY
2605 Interstate Drive
Harrisburg, Pennsylvania 17110-9364



January 10, 2003

DOCKET NUMBER
PETITION FILE # 50-79
(67FR 66588)

DOCKETED
USNRC

28

January 17, 2003 (11:16AM)

Secretary
U. S. Nuclear Regulatory Commission
ATTN: Rulemaking and Adjudications Staff
Washington, DC 20555-0001

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Dear Sir or Madam:

This is in response to your request for public comment published in the Federal Register Volume 67, No. 212/Friday, November 1, 2002/Proposed Rules, specifically 10 CFR Part 50, Docket No. PRM-50-79.

Comments to the Lawrence T. Christian, et. al.; Receipt of Petition for Rulemaking, specifically The Petitioners' Justification:

1. Establishment of Designated Relocation Centers – The petitioners correctly assert that relocation centers are currently required for all elementary, middle, and high school students. They further contend that it is vital that relocation centers be designated for preschoolers. While their position may be laudable it must be remembered that these preschools are private businesses whereas elementary, middle, and high schools are public institutions. Parents are legally required to send their children to public schools unless they opt to enroll them in private institutions. The use of private day care facilities is voluntary on the part of the parents. There is no legal requirement to send children to them. It is strictly a parental option. Forcing these private enterprises, by regulation, to meet the same standards as public schools could be construed as yet another intrusive, unfunded government mandate. This would be no different than changing regulations to force businesses, social organizations, and entertainment venues to designate relocation centers and develop plans and assets to transport their members there.
2. Provision of Designated Transportation; Creation of Working Rosters of Emergency Bus Drivers – The petitioners believe that nurseries and day care centers should be required to have designated busses or vans, drivers, and back-up drivers to transport children out of the EPZ in the event of an emergency. We agree that this is an excellent goal. However, this is an issue that would be better addressed by the parents instead of the NRC. Day care is an option for parents. They pay money for the service and therefore are in an excellent position to choose what is best for their own children. If they feel that a particular day care center or nursery does not meet the safety level they require for their children they have the option of taking their business elsewhere. This applies to any day care center or nursery in the country, including the unlicensed "mom and pop" types, that are found in places other than nuclear power plant EPZs.

Template = SECY-067

SECY-02

Attachment 4

3. Use of Assigned and Installed, Approved Child-Safety Seats in the Evacuation of Preschoolers – The petitioners request that the NRC require that children under 50 pounds or 4' 9" in height attending day care centers and nurseries be placed in approved safety seats prior to evacuation. This is illogical in an emergency situation. Numerous kindergarten and early elementary students not meeting these dimensions are safely transported daily. Infants do present a challenge but concerned parents should insist that child care providers have methods in place to safely evacuate their children in any type of emergency. Car seat requirements will be waived in a bona fide emergency. No institution is going to sit still and do nothing while radiation, a chlorine cloud, tornado, or flood passes over them because they lack car seats. Again it is incumbent on concerned parents to ensure the people they voluntarily entrust their children to have the capability to properly keep them safe.
4. Notification to Emergency Management Officials; Annual Site Inspections; inclusion of Day Care Centers and Nursery Schools in Radiological Preparedness Exercises – FEMA-REP-14, dated September 1991, already allows for this if these private institutions agree to participate on a voluntary basis.
5. Use of Identification Cards, School Attendance Lists and Fingerprinting To Keep Track of Children During an Emergency Evacuation – The petitioners' discussion on this subject requires one to accept that parents are leaving their children with care providers who have no idea who they are or who they belong to. This is ludicrous and leaves one wondering how they manage to match the children to their proper parents when they pick them up at the end of the day. Public schools with much larger classes are able to keep track of all their students on a daily basis. Again parents are responsible for placing their children in the hands of care providers that meet their safety requirements.
6. Preparation of Educational Materials for the Parents of Preschoolers – This is a great idea but once again this should be based on the insistence of responsible parents and not the NRC.
7. Stocking KI Tablets and the Preparation of Relevant Educational Materials for the Parents of Preschoolers – This is strictly a parental matter and decision. Additionally there is not a "one size fits all" solution that the NRC could dictate. In states that have accepted KI for the general public the pills are available to parents for family members. Some states have opted to accept the KI and stockpile it rather than pre-distribute it. Others have opted not to accept it. Responsible parents are more capable of deciding what is best for their own children.
8. Radiological Emergency Preparedness Training for Employees of Day Care Centers and Nursery Schools – The petitioners do not specify exactly what type of radiological emergency preparedness training they want day care employees to have. General information found in all of the EPZ telephone books provides

guidance for sheltering and evacuation. It is the same information that is available to the entire general public. Any further training such as that provided to emergency responders would serve no purpose to child care providers because they do not use survey instruments and other detection devices.

9. **Phone Listings for Designated Relocation Centers Assigned to Local Day Care Centers and Nursery Schools; Toll-free and 911 Information Lines –** Once again this is an issue best resolved between the parents and the child care provider. These are questions any responsible parent should ask prior to placing their children into the business's care. It boggles the mind that a parent would instruct someone else to pick up their child and provide no instructions as to what to do if there is an emergency. The toll free and 911 information lines already exist. During any emergency in this state, affected 911 centers are fully manned and rumor control centers are activated.
10. **Creation of Written Scripts for the Public Emergency Broadcast System Which Include Information About Emergency Plans and Designated Relocation Centers for Day Care Centers and Nursery Schools –** This is a counterproductive request. Emergency Alert System (EAS) messages are limited to a two minute maximum length and it is voluntary for broadcasters to air them. It would be impossible to list emergency plan information and relocation centers in a message of this length. Parents should have already requested this information from their child care providers. Additionally, it would tend to weaken the importance of an EAS message and the preceding siren alert to use the system to distribute information to the general public that is already provided in telephone books and other brochures. There is no need to tell parents that their children have left their buildings. Evacuation means just that – everyone within the zone is to evacuate.
11. **Specialized Evacuation Needs of Preschool-aged Children –** The petitioner's points about the special needs of preschool aged children are accurate but are no different than the needs of other children this age in any type of evacuation. Being in the Emergency Planning Zone (EPZ) of a nuclear power plant does not make evacuation any tougher than evacuating infants and toddlers in the event of a chlorine leak or fast moving natural disaster. These children are at no more risk to radiation than any public school student within the EPZ. This is not something that needs addressed with another federal regulation. If truly concerned, parents should be capable of insisting institutions provide for these needs or take their business elsewhere.

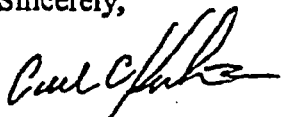
The petitioners give the distinct impression that their goal here is to further anti-nuclear activism. They appear to be concerned only with day care centers and nurseries near nuclear power plants. There is no mention of centers located near chemical plants, transportation routes where hazardous materials are transported, or basic natural hazards that the entire nation is susceptible to on a daily basis. The use of phrases such as "... society as a whole has a moral obligation to make sure that every possible measure is in place to insure the safety and well-being of young

children," merely states the obvious and appears as an effort to inject raw emotion into the discussion.

As the rules exist now, any nursery or day care center may opt to participate in the Radiological Emergency Preparedness program on a voluntary basis. This is sufficient. Ultimately this boils down to a parental decision on what they consider to be a proper level of safety for their own children. This level is bound to vary between families and there is not a "one size fits all" regulation that the government can invent. Obviously the majority of people living in an EPZ are comfortable and feel secure or they would not continue to build, move, and live there. Parents have the option of if and where they send their children for care. It is they who should insist these providers have a viable "all hazards" plan for emergencies that may occur that would affect their children. Any day care center or nursery can get assistance from the county emergency management agency or the utility off-site planners.

We recommend that the petitioner's request be denied.

Sincerely,



Carl C. Kuehn, II
Acting Director

CCK/DRF/bea



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
HARRISBURG

DOCKETED
USNRC

October 8, 2003 (1:10PM)

DOCKET NUMBER

PETITION FILE PRM 50-79
(67 FR 66588)

October 3, 2003

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

55

Annette L. Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemaking and Adjudications Staff

Re: Petition for Rulemaking dated September 4, 2003 by
Lawrence T. Christian, Docket No. PRM-50-79 / 67 FR 66588

Dear Secretary:

Please be advised that the Commonwealth of Pennsylvania hereby withdraws its January 10, 2003 Comments to the above-referenced Petition for Rulemaking that were received and docketed by the Commission on January 17, 2003 (11:16AM). The Commonwealth submits revised Comments as follows.

Pennsylvania strongly supports the development of "all hazards" emergency plans for child day care facilities and nursery schools throughout the state. In addition to the unlikely event of a dangerous incident at a nuclear power facility, those facilities entrusted with the care and supervision of our preschool aged children must be prepared to deal with the threats posed by fire, floods, tornadoes, chemical spills, and/or other emergency incidents.

Pennsylvania believes that state and local governments are best able to ensure that child day care facilities and nursery schools within their borders engage in proper emergency preparedness planning. As such, the Commonwealth and its constituent departments and agencies have taken the following steps:

1. The Pennsylvania Department of Public Welfare (DPW) wrote to every child-care provider across the state and asked that they contact their county Emergency Management Agency for assistance in developing an appropriate emergency preparedness plan.
2. Complimenting DPW's efforts, the Pennsylvania Emergency Management Agency (PEMA) developed and sent "model" emergency preparedness plans to the local Emergency Management Agencies for schools and child-care facilities that can be used to assist child-care providers in developing their own, individually tailored plans. Accordingly, DPW will soon be sending the same plans to the providers.

Template = SECY-067

SECY-02
Attachment 4

Annette L. Vietti-Cook

October 3, 2003

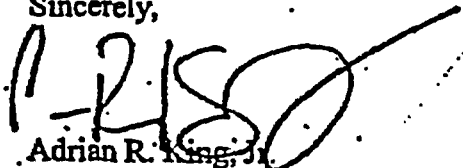
Page 2

3. DPW is in the final stages of a review of all of the Department's regulations applicable to licensed and registered child-care facilities. As part of this review, DPW will broaden administrative and regulatory emergency planning requirements to include appropriate "all hazards" preparedness plans.

4. Finally, the Pennsylvania Governor's Office, DPW and PEMA have been working with the state legislature to develop a permanent statutory solution to this issue. Legislation that requires child day care facilities and nursery schools to develop and implement comprehensive, all hazards disaster response and emergency preparedness plans has been drafted and is now making its way through the legislative process. It is anticipated that the legislation will ultimately be passed.

In closing, the Commonwealth believes that it should take the lead in ensuring the safety of its preschool aged children, and that emergency planning requirements be aimed at protecting against ALL threats and hazards that exist, regardless of whether they are natural or man made. The Commonwealth appreciates the opportunity to submit these revised comments, and would be happy to answer any questions that the Commission may have.

Sincerely,



Adrian R. King, Jr.
Special Assistant to the Governor

cc: Governor Edward G. Rendell
David Sanko, Director, Pennsylvania Emergency Management Agency
Estelle B. Richman, Secretary, Department of Public Welfare



FEMA

OCT - 6 2004

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

Eric J. Epstein
4100 Hillsdale Road
Harrisburg, PA 17112

Dear Messrs. Christian and Epstein:

This is in response to your letter dated September 2, 2004, requesting the Federal Emergency Management Agency (FEMA) to take immediate action to bring the Commonwealth of Pennsylvania into compliance with the Federal regulations pertaining to emergency planning for day care centers and nursery schools.

Currently established Federal requirements and guidance describe general emergency planning requirements for students in day care centers and pre-schools. These documents include the Code of Federal Regulations (C.F.R.), Volume 44, Part 350, "Review and Approval of State and Local Radiological Emergency Plans and Preparedness;" 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," Section II.J and Appendix 4; and FEMA Guidance Memorandum (GM) EV-2, "Protective Actions for School Children." The term "schools," as defined in GM EV-2, refers to public and private schools, and licensed or government supported pre-schools and day care centers.

In Pennsylvania, it is FEMA's understanding that licensed, non-profit and for-profit day care centers and government supported pre-schools and day care centers are on lists that the Offsite Response Organization (ORO) maintains. In the event of an emergency, the ORO will notify them so that they can implement their emergency procedures. Unlicensed, private daycare centers and preschools, by the very fact of being unlicensed, are beyond the reach of State and local government regulation, and thus, are considered with the needs of the general population within the 10-mile Emergency Planning Zone (EPZ).

On July 14, 2004, Pennsylvania enacted a statute that became effective on September 12, 2004, which requires that all day care centers in the Commonwealth develop emergency plans. FEMA appropriately found reasonable assurance before the passage of this statute. As a general matter the Federal Government may not enforce compliance with a State law. Each State has the responsibility of enforcing compliance with its laws.

FEMA's requirements and guidance, along with the established Pennsylvania and local government radiological emergency plans, provide FEMA with continued reasonable assurance that procedures are in place in Pennsylvania to adequately protect all members of the public, including children in daycare centers and nursery schools, in the event of an incident at any of Pennsylvania's nuclear power plants.

If you have any further questions regarding this issue, please feel free to contact Ms. Vanessa E. Quinn, Chief, Radiological Emergency Preparedness Section, at (202) 646-3664.

Sincerely,



W. Craig Conklin
Chief

Nuclear and Chemical Hazards Branch

**FEMA**

OCT 13 2004

Honorable Todd Russell Platts
Member of Congress
19th District, Pennsylvania
2209 East Market Street
York, PA 17402

Dear Congressman Platts:

This is in response to your letter dated September 16, 2004, requesting information to address concerns raised by one of your constituents, Mr. Larry Christian, regarding emergency plans and procedures for children in day care centers and other special populations around the Three Mile Island (TMI) Nuclear Station, located in the Commonwealth of Pennsylvania. Also, please find the enclosed Guidance Memorandum (GM) 24, "Radiological Emergency Preparedness for Handicapped Persons," that Mr. Christian requested.

The joint Federal Emergency Management Agency (FEMA) and Nuclear Regulatory Commission (NRC) guidance document, NUREG-0654/FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," Planning Standard J, Protective Response and Appendix 4.II.C, provides criteria for each State and local organization to establish a capability for implementing protective actions for persons in response to a radiological emergency at a commercial power plant. These criteria include school children within the plume exposure pathway Emergency Planning Zone (EPZ).

On November 13, 1986, FEMA issued Guidance Memorandum (GM) EV-2, Guidance for Protective Actions for School Children. GM EV-2 is intended to aid Federal officials in evaluating emergency plans and preparedness for school children during a radiological emergency. It is intended that State and local government officials and administrators of public and private schools, including licensed and government supported pre-schools and day-care centers, use this guidance to develop emergency response plans to protect the health and safety of students.

The issues identified in the letter from Mr. Christian are addressed in the following paragraphs.

www.fema.gov

RECEIVED TIME OCT. 15. 1:17PM

PRINT TIME OCT. 15. 1:23PM

Attachment 4

Issue 1.

Has FEMA been certifying Pennsylvania's Radiological Emergency Response Plans without preschool children for the past 18 years?

Daycare centers and nursery schools are considered private businesses in the Commonwealth of Pennsylvania as opposed to elementary, middle and high schools that are considered public institutions.

In the Commonwealth of Pennsylvania, it is FEMA's understanding that licensed, non-profit and for-profit day care centers and government supported pre-schools and day care centers are on lists that the Offsite Response Organization (ORO) maintains. In the event of an emergency, the ORO will notify them so they can implement their emergency procedures. Unlicensed, private daycare centers and preschools, by the very fact of being unlicensed, are beyond the reach of State and local government regulation, and thus, are considered with the needs of the general population within the 10-mile EPZ. Therefore, FEMA's requirements and guidance, along with established Pennsylvania and local government radiological emergency plans, provide FEMA with continued reasonable assurance that procedures are in place in Pennsylvania to adequately protect all members of the public, including children in daycare centers and nursery schools, in the event of an incident at any of Pennsylvania's nuclear power plants.

Issue 2.

Can FEMA be certain that it has not certified ANY other states who have not adequately provided planning for all special populations covered under GM-EV-2 "Protective Actions for School Children" and GM-24 "Radiological Emergency Preparedness for Handicapped Persons"?

FEMA's responsibilities in radiological emergency planning for fixed nuclear facilities include the following:

- Taking the lead in offsite emergency planning and in the review and evaluation of Radiological Emergency Response Plans (RERPs) and procedures developed by State and local governments;
- Determining whether such plans and procedures can be implemented on the basis of observation and evaluation of exercises of the plans and procedures conducted by State and local governments;

Therefore, based on FEMA's annual review of all of the offsite REP Plans for every site, along with the evaluation of biennial exercises that test those plans, FEMA has not certified any plans that do not contain the required planning for all population groups within the 10-mile EPZ, including children in daycare centers.

Issue 3.

Will FEMA certify Pennsylvania's RERP if Act 2004-73 only covers "for profit" child care facilities but leaves all other child care facilities without planning?

All other child care facilities are not without planning. As stated in response to Issue #1, in the Commonwealth of Pennsylvania, it is FEMA's understanding that licensed, non-profit and for-profit day care centers and government-supported pre-schools and day care centers are on lists that the ORO maintains. In the event of an emergency, the ORO will notify them so they can implement their emergency procedures. Unlicensed, private daycare centers and preschools, by the very fact of being unlicensed, are beyond the reach of State and local government regulation, and thus, are considered with the needs of the general population within the 10-mile EPZ. Therefore, FEMA's requirements and guidance, along with established Pennsylvania and local government radiological emergency plans, provide FEMA with continued reasonable assurance that procedures are in place in Pennsylvania to adequately protect all members of the public, including children in daycare centers and nursery schools, in the event of an incident at any of Pennsylvania's nuclear power plants.

If FEMA finds a problem with the REP Plans and the problem has the potential to impact public health and safety, we would require the State and local OROs to correct the problem and update their plans within 120 days. Less serious planning issues would require a revision of the REP Plan prior to the next FEMA annual plan review.

According to GM EV-2, "Protective Actions for School Children," schools are referenced in NUREG-0654/FEMA-REP-1 Appendix 4 on pages 4-2 And 4-3 as a type of special facility population for which evacuation time frames are needed on an institution-by-institution basis. The term "schools" as used in GM EV-2 refers to public and private schools, and licensed or government supported pre-schools and day-care centers.

Issue 4

Will FEMA certify Pennsylvania's RERP if special populations are not provided transportation and relocation centers by the appropriate State and local government authorities?

FEMA would not certify Pennsylvania's RERP if special populations are not provided transportation and relocation centers.

According to GM 24, "Radiological Emergency Preparedness for Handicapped Persons," contacts to provide communication and physical assistance are identified for each individual. In Pennsylvania, agreements have been made with ambulance, transportation companies, and van drivers to effectuate the transfer of those who need special transportation, and route instructions are provided.

In Pennsylvania, special populations with transportation-dependent needs are kept on file at the municipal and or county EOC. If a person or facility contacts the municipal or county EOC and notifies them that they will require transportation in the event of an emergency, the officials would make arrangements to provide it to them. Those transportation providers are trained on the locations of the reception and mass care centers.

Also, in Pennsylvania, agreements have also been made with hospitals, mental hospitals, nursing homes and community mental health centers outside the EPZ to receive severely movement-impaired populations.

Issue 5.

Isn't GM-EV-2 "Protective Actions for School Children" and GM-24 "Radiological Emergency Preparedness for Handicapped Persons" in place so that the State will treat these populations as "special populations" and therefore the local governments are required to treat them differently?

GM-EV-2 and GM-24 are guidance documents from FEMA to assist State and local OROs in developing adequate REP Plans and procedures for school children and special populations.

Daycare centers and nursery schools are considered private businesses in the Commonwealth of Pennsylvania as opposed to elementary, middle and high schools that are considered public institutions. However, just as a private business may contact the municipal EOC and request transportation assistance to a relocation center due to a large number of transit-dependent employees, a private or home-operated day care center may make the same request and arrangements will be made with the municipal and/or County offsite response officials.

Issue 6.

In the event that rural areas cannot provide shelter resources and if the Commonwealth of Pennsylvania cannot plan for these facilities is it the utility's responsibility and will FEMA certify the Commonwealth of Pennsylvania RERP if the State cannot afford to provide for these shelters?

The Commonwealth of Pennsylvania has procedures in place for handling "unmet needs" such as having enough municipal shelters for citizens that have been instructed to evacuate to a reception center or a mass care facility. If a municipality finds itself lacking adequate resources during an emergency, they will contact the appropriate County and request assistance in fulfilling the unmet need. If the County cannot fill the request, they can contact neighboring counties for assistance or they may contact the state to fill the request for assistance. If by some chance the Commonwealth cannot provide the assistance, there is an option of requesting it from the Federal Government.

The NRC requires utilities to have their own offsite emergency response plan in the event a state or local ORO decides not to have a plan or implementing procedures. However, whether a utility provides funding directly to the State and local OROs to upgrade emergency facilities is not an issue in which FEMA would become involved. We would leave those issues for the NRC to work out with their utilities.

If you have any further questions regarding this issue, please feel free to contact Mr. W. Craig Conklin, Chief, Nuclear and Chemical Hazards Branch, at (202) 646-3030.

Sincerely,



R. David Paulison
Director
Preparedness Division

Enclosure - GM #24

5

RECEIVED TIME OCT. 15. 1:17PM

PRINT TIME OCT. 15. 1:23PM



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
HARRISBURG

THE GOVERNOR

July 12, 2004

TO THE HONORABLE, THE SENATE
OF THE COMMONWEALTH OF PENNSYLVANIA

I am allowing Senate Bill 922 entitled "An Act amending Title 35 (Health and Safety) of the Pennsylvania Consolidated Statutes, providing for custodial care facilities" to become law without my signature. I realize that the House and Senate passed this bill with the best intentions of protecting children in the event an emergency. But, I am allowing it to become law without my signature as a demonstration of my concern for the limited scope of the bill.

The passage of this bill occurred in a very busy week where many weighty bills competed for the attention of leadership and members. In that context, the full debate worthy of this bill could not occur. As a result, the legislature passed a bill that requires only for-profit childcare facilities to provide emergency evacuation plans for the children in their care.

Nine months after I took office, I learned the state did not require emergency planning as a routine aspect of childcare licensure. Given these troubling times, when the potential for such emergencies is greatly increased, I directed the Secretary of Public Welfare to utilize her authority under 55 Pa. Code, §3270.21, §3280.20, and §3290.18 to publish a statement of policy in the December, 2003 Pennsylvania Bulletin requiring every child care center, group day care home and family day care home operator to develop an emergency preparedness plan. In concert with the Department of Public Welfare, PEMA created a standard emergency planning tool to guide every childcare provider in creating such a plan. This plan ensured that the provider had all possible phone numbers of parents and relatives of each child. It also required the provider to address how they might transport each child to safety in the case of an emergency. Obviously, these are questions that any substantive health and safety licensure process would require of any childcare entity.

Given that the legislation that was passed speaks to the need for emergency preparedness plans for only a segment of providers, and that it does not exempt the balance of such providers from preparing such plans, I believe our legal authority to require these plans is

Attachment 4

maintained through regulation. No one should view this bill as an excuse for not following the Department's policy as outlined in December, 2003 Pennsylvania Bulletin.

The President and former Governor Ridge have urged us all to be vigilant. They call on each of us to be prepared in the case of an emergency. Yet this bill is silent with respect to emergency planning for the evacuation of children for 183,000 children in licensed non-profit or family care entities. This bill provides for the statutory authority to require a class of childcare providers to prepare emergency plans. I believe the law of the Commonwealth should require such plans for *all* classes of licensed providers.

I would urge the legislature to pass new legislation that ensures total consistency with this policy by expanding the statutory requirement for emergency plans to all childcare, group day care and family day care homes. I believe the parents in the Commonwealth who rely on these entities expect nothing less.

I am hopeful that you will see the wisdom of including *all* appropriate childcare facilities within the purview of the mandates of this bill and send legislation to me to correct this oversight this fall.

Edward G. Rendell

Edward G. Rendell
Governor



F.E.M.A. Region 7 - Project Use
Federal Emergency Management Agency

37

Region VII
2323 Grand Blvd., Suite 900
Kansas City, MO 64108-2670

DOCKETED
USNRC

January 22, 2003 (3.54PM)

OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

DOCKET NUMBER

PETITION FILE # PRM 50-79
(67FR 66588)

Copy etc
JAN 15 2003

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Attention: Rulemaking and Adjudication Staff

Docket Number: PRM-50-79

FEMA Region VII has reviewed the petition for rulemaking concerning emergency planning for daycare centers and nursery schools. We would like to offer the following comments:

1. We respectfully disagree with the petitioners' statement that there are no Federally mandated requirements specifically designated to protect daycare centers and nursery schools located in evacuation zones around nuclear power stations. Specifically, the following FEMA guidance documents address the protection of daycare and nursery school children: Guidance Memorandum EV-2, dated November 13, 1986; Memorandum "Response to Request for Policy Clarification on Radiological Emergency Planning for Day Care Centers" from Craig Wingo of FEMA National Office to Stephen Harrell of FEMA Region VII, dated March 5, 1993; FEMA-REP-14 "Radiological Emergency Preparedness Exercise Manual", dated September 1991; and "Radiological Emergency Preparedness: Exercise Evaluation Methodology" published in the Federal Register April 25, 2002.

Quote & amplified in state & utility

2. All four states within FEMA Region VII have addressed the protection of licensed daycare and nursery school children in their Radiological Emergency Response plan. Specifically, the plans address, at a minimum, transportation resources available for evacuating the daycares and nursery schools, reception and care centers for these facilities, alert and notification procedures for these facilities, and public information for parents and guardians of daycare and nursery school children.

3. We do not agree with the petitioners' request that child safety seats be mandated specifically in the event of a radiological emergency at a nuclear power facility. We are not aware of any federal or state requirement that child safety seats be

Template = SECY-067

ATTACHMENT 4
SECY-02

available at daycare or nursery schools in the event of any type of emergency evacuation of these facilities, whether it be due to natural or man-made occurrences. Should this be made a requirement specifically for the Radiological Emergency Preparedness (REP) program, we believe that the responsibility for providing these seats should be levied upon the individual parents and that they should be required to provide a safety seat to be left with the daycare or nursery school facility at all times.

4. We disagree with the petitioners' request that annual site inspections of daycare centers and nursery schools be made a part of the REP program. Inspections of these types of facilities are normally the responsibility of a state's health or social services department and we believe that is where this responsibility should remain.
5. We disagree with the petitioners request that identification cards, school attendance lists, and fingerprint records be mandated as part of the REP program requirements for daycares and nursery schools. Again, we believe that state health or social services departments have the responsibility for ensuring that licensed daycares and nursery schools have a mechanism in place for maintaining child accountability.
6. We strongly disagree with the petitioners' request that potassium iodide (KI) be stockpiled at daycare centers and nursery schools. If the daycare centers and nursery schools are evacuated prior to a radiological release, which is the stated intention in most REP plans, then there would be no need for KI for the children. Further, we believe that few parents of infants or preschool age children would choose to allow daycare or nursery school administrators to make decisions concerning whether or not to administer KI tablets to their children. Few parents would want the responsibility for administering the proper dosages to their children to be left to these non-medical individuals. Most public schools require a Medical Doctor's statement to even give an aspirin to students. Nursing homes will only give KI to patients with written permission from a Doctor. We believe that providing KI to daycare centers and nursery schools and expecting them to properly administer it to these very young children would be a serious mistake.

In summary, FEMA Region VII believes that adequate federal requirements are in place for the protection of daycare and nursery school students and that most states are in compliance with those requirements. Further, we believe it is the responsibility of FEMA, and the states themselves, to ensure that those states not in compliance


with these requirements immediately take steps to correct any shortcomings in their planning and preparedness. We believe that many of the requests in the petition for rulemaking go well beyond what is reasonable and necessary emergency preparedness. Therefore, it is our recommendation that the petition be disregarded.

Sincerely,

Ronald L. McCabe

Ronald L. McCabe
RAC Chairman/Chief
Technological Services Branch

CC: Vanessa Quinn, ONP-TH-RP
Ken Wierman, ONP-TH-RP
Bill Maier, NRC IV
Roland Lickus, NRC III
FEMA VII REP Staff





PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY
2605 Interstate Drive
Harrisburg, Pennsylvania 17110-9364



May 19, 2003

9

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

Dear Mr. Christian:

I am responding to your letter dated April 11, 2003, and in reference to "U. S. NRC Petition for Rulemaking PRM 50-79," on behalf of Governor Edward G. Rendell.

The question you raise is a valid one as day care and nursery school facilities are more plentiful today than twenty years ago. The Pennsylvania Emergency Management Agency (PEMA) has raised this issue with the emergency management professionals, who at the county level, are responsible for disseminating information, implementing program changes and assisting the municipalities within their jurisdictions. Since the early 1980s when the federal guidance on Radiological Emergency Response Preparedness (RERP) was initially established, the Commonwealth has been at the forefront of the national discussion. PEMA continues to lead this effort in conjunction with the eleven counties in the five nuclear power plant Emergency Planning Zones (EPZ) within the Commonwealth. The planning effort is reviewed on an annual basis. The preschool issue is currently under review. The issue is compounded because private businesses are not subject to the same requirements placed on public entities. Additionally, the existing regulatory guidance (PEMA-REP14, dated September 1991) already allows for voluntary participation by private institutions.

PEMA has also reviewed and commented on the petition you authored and filed with the Nuclear Regulatory Commission (NRC). Based on our review, the Commonwealth has recommended the petition be denied. Our recommendation is based on our belief that parental and local involvement with these facilities will have better success than another highly prescriptive federal regulation. We agree the issue is valid. Many of the counties have taken steps to notify and advise preschool facilities on the importance of developing facility emergency plans for all hazards. Operators are encouraged to provide this information to the parents and the municipalities in which they operate. Some municipalities have had preschool facilities incorporated into their municipal planning efforts for years; other have not and more needs to be done.

The Commonwealth will continue to encourage voluntary participation in RERP programs for all interested parties and seek answers to the broader issues concerning "all hazards" planning and protection of all of our citizens.

Thank you for your concern in this matter. If I can provide additional information do not hesitate to contact me.

Sincerely,

David M. Sanko
Director

DMS/HHR/beb

ATTACHMENT 4