

April 22, 2008

COMGBJ-08-0002 - Corrected

MEMORANDUM TO: Chairman Klein
Commissioner Lyons
Commissioner Svinicki

FROM: Annette L. Vietti-Cook, Secretary */RA/*

SUBJECT: COMMISSIONER JACZKO'S REQUEST FOR
RECONSIDERATION OF THE COMMISSION DECISION IN
SECY-05-0045

Commissioner Jaczko, in his vote on SECY-07-0225 (Revision of NUREG-0654, Supplement 3, "Criteria for Protective Action Recommendations for Severe Accidents"), requested Commission reconsideration of the decision on SECY-05-0045, "Denial of a Petition for Rulemaking to Revise 10 CFR Part 50 to Require Offsite Emergency Plans to Include Nursery Schools and Day Care Centers (PRM-50-79)."

In circulating Commissioner Jaczko's request for reconsideration, the Office of the Secretary referred to SECY-06-0228 (Denial of a Petition for Rulemaking to Codify Federal Emergency Management Agency GM EV-2, "Protective Actions for School Children," Into the Emergency Planning Regulations in 10 CFR Part 50 (PRM-50-81)), which was a more recent decision on a similar issue.

Vote sheets are provided for your response to Commissioner Jaczko's motion for reconsideration.

Attachments: 1) Commissioner Jaczko's vote on SECY-07-0225
2) SRM on SECY-05-0045
3) SRM on SECY-06-0228
4) Vote Sheet for COMGBJ-08-0002

cc: Commissioner Jaczko
EDO
OGC
CFO
OCA
OPA
OCAA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR

**Commissioner Jaczko's Comments on SECY-07-0225
Revision of NUREG-0654, Supplement 3, "Criteria for Protective Action
Recommendations for Severe Accidents"**

I approve of the staff's recommendation to revise the protective action recommendation (PAR) guidance contained in NUREG-0654, Supplement 3, to reflect the results of this PAR study. The staff should be commended for the thorough review of work in this area and for the detailed technical analysis included in this new NUREG/CR-6953, Volume 1. I look forward to the second part of this study investigating how the public will receive revised PAR guidance. I also encourage the staff to move as quickly as possible to get input from the public and update the agency's protective action guidance to be used by state and local governments in the unlikely event of a significant accident at a nuclear power plant.

I think it is important to highlight several findings of this report. One of the main themes that emerges is the importance of accurate evacuation time estimates. The lack of a requirement that these protective action recommendation tools be regularly updated and maintained to a high-quality standard has been a concern of mine for years. That is why I have strongly supported the emergency preparedness proposed rulemaking provision that would put in place more stringent maintenance requirements for these evacuation time estimates and triggers for updating them -- including every ten years, when emergency planning zone (EPZ) populations change by 10 percent or more, and when there are major changes to the infrastructure around the plants. Better evacuation time estimates will yield better protective action recommendations.

Another discussion in the report worthy of note involves a review of the research into human behavior during emergencies. It is important to state that documented observed behavior in the face of disaster reveals that emergency workers respond in a selfless manner putting the needs of the community over their personal concerns. That is why we have so much respect for first responders - they do that every day. Additionally, local leaders and the public as a whole do not panic or behave irrationally, but instead help each other out in emergencies. This is not new information, but is important to reemphasize. It also reinforces the importance of having good emergency plans in place for local leaders, first responders, licensees, and the public to be able to implement if necessary.

The report also notes NRC studies which have concluded that shadow evacuation – or people evacuating outside of a designated evacuation area – is a real phenomenon in some disasters but one that has no statistically significant impact on the effectiveness of overall evacuation efforts. In addition, the volume of people over-responding to evacuation orders can be mitigated by better communication with members of the public outside the evacuation area and by implementing traffic control measures.

I believe it is important to highlight several other sections of this study which I believe will be of particular interest to the public. The report concludes that there is more work to do to protect special needs populations around nuclear power plants – both those people in special needs facilities such as schools and hospitals, and those people with special needs who live at home. It notes the difficulties experienced in previous disasters such as Hurricanes Katrina and Rita when it was discovered that multiple special facilities had contracted with the same

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transportation services for evacuations, and those resources were overwhelmed by the need to simultaneously evacuate them all. The study notes that evacuating some of these facilities – such as hospitals – can take up to 20 hours. It also focuses on the challenges and importance of doing additional work to identify in advance those members of the special needs populations who do not reside facilities to ensure they are adequately incorporated into emergency plans. Finally, the report emphasizes the value in some scenarios of taking early protective action for special needs populations – both to ensure there is time to safely evacuate them, and to help spread out any subsequent evacuations that may need to occur.

These conclusions cause me significant additional concern about the Commission's October 26, 2005 denial of a petition for rulemaking to revise 10 CFR Part 50 to require offsite emergency plans to include nursery schools and day care centers (PRM-50-79). The petitioner raised several concerns about the adequacy of evacuation plans for these facilities and argued that they needed to be address in a systematic way. **I believe that this study provides sufficient evidence for accepting this petition and therefore, consistent with the Commission's internal procedures, I formally offer a motion for reconsideration of that Commission decision. The staff should include the content of that petition as part of the rulemaking the staff has initiated to enhance emergency preparedness regulations and guidance. If it is too late to incorporate the petition into that rulemaking without delaying it significantly, the staff should initiate a separate rulemaking. In addition, the staff should ensure that the effort to update the NUREG-0654 guidance specifically addresses these issues.** There are a myriad of ways these issues can be addressed, but we need to consciously do so now based on the findings detailed in this study.

Along those same lines, the staff should evaluate other findings from this study to determine if there are issues of such importance that they should not only be addressed in the NUREG-0654 guidance, but should also be the subject of rulemaking to enhance existing EP regulatory requirements and ensure sufficient minimum mandates are placed on licensees in a transparent manner.

There is one protective option that was omitted from this study that I believe should have been included. The conclusion that preferential sheltering - using larger group facilities that may provide better radiation shielding than a normal residence - was unfeasible seems sound. But this is because the benefits are not that great versus the cost, as people sheltering in those facilities could still receive radiation doses since the buildings are not airtight and would have to be ventilated with outside air. Large pressurized sheltering facilities may prevent interior contamination and thereby offer much greater protection, as they do in the U.S. today in chemical stockpile hazard zones. And while the costs and logistics of building, maintaining, and operating them might be significant, this study assumed that pressurized facilities would not be available in nuclear power plant emergency planning zones. By not including them in this study, we do not have the data to know if the benefits they could provide would be worth that additional cost. **The staff should therefore rerun the models developed for this study with the option of access to pressurized sheltering facilities compared against the other strategies studied. This analysis should be straightforward since the models are already developed. The staff can then attach the results of this effort to the forthcoming Volume II of this report.**

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Finally, the study was premised on a scenario that leads to a release of radioactive material 40 minutes from the declaration of a General Emergency. While such a scenario is extremely unlikely, the fact that the NRC studied it and has now formally concluded that in certain emergencies resulting in releases of radiological materials – such as short duration or “puff” releases – it is better for some people to shelter in place before evacuating, is significant. The challenge for the agency now is to explain this dramatic change in protective action recommendations to the public. Because there remains a widespread belief among many members of the public that evacuation is the best option for a radiological emergency, this discussion about sheltering may be seen by some stakeholders as an admission that emergency plans are insufficient. Even though temporarily sheltering-in-place may be the right answer scientifically, we risk losing the confidence of the very people we will need to follow protective action recommendations for these measures to be successful at reducing radiation exposures.

Ultimately, the best way to address this challenge is to continue to develop a performance based definition of reasonable assurance that focuses on what the standard should be, transparently quantifies the level of protection that emergency preparedness plans and procedures provide, and then codifies these results into regulations that are objective and measurable. By making clear the overall performance measures we strive to meet, we are more likely to be able to gain the support of the very people that we need to listen, believe, and follow instructions to shelter in place – if in fact that is the safest course of action for a given scenario.

/RA/

Gregory B. Jaczko 2/13/08
Date

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AFTER DISPATCH OF THE LETTER TO THE PETITIONER.

October 26, 2005

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary /RA/

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

The Commission has approved the staff's recommendation to deny the petition for rulemaking (PRM-50-79) and publish the associated *Federal Register* notice, subject to the comments and changes noted below.

The staff should seek further information from the Federal Emergency Management Agency (FEMA) on the level of communication taking place between state and local governments and day care centers in the Three Mile Island (TMI) emergency planning zone. The staff should explore with FEMA and other stakeholders options to further assess the questions raised in the petition about local implementation of relevant requirements and guidance and provide any appropriate recommendations for improvement, as necessary. These options should include public outreach and surveying of day care centers and nursery schools in the TMI emergency planning zone to ascertain the level of cognizance of emergency response activities that would apply to them in the event of an emergency at TMI. The staff should inform the Commission of its progress on this issue within 60 days.

(EDO)

(SECY Suspense: 12/27/05)

The staff shall develop guidance and expectations for the NRC review of FEMA's assessment and findings of offsite emergency preparedness.

In addition, the staff should brief the Commission Technical Assistants on how pending organizational changes at the Department of Homeland Security (DHS) will affect the NRC's current relationship with FEMA. The staff should begin discussions with DHS regarding any revisions that may be necessary to the current Memorandum of Understanding (MOU) between the NRC and FEMA as a result of organizational changes. The staff should use these discussions as a vehicle to ensure that any needed changes to strengthen cooperation between the two agencies are made.

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Changes to the Federal Register notice

1. On page 5, 2nd to last item in the table, move the 'X' to place it in the proper column.
2. On page 6, in the heading in the middle of the page, insert an apostrophe after 'PETITIONERS'.
3. On page 6, 1st full paragraph, revise line 5 to read ' ... regulations to ensure that'
4. On page 8, 1st full paragraph under "PUBLIC COMMENTS", line 4, after the period insert the following new sentence: In addition, the NRC received 1 letter that discussed KI but did not take a position on the petition.
5. On page 9, move the line that discusses the letter on KI to the end of the list.
6. On page 9, revise the sentence about the 12 letters from State Governments to read ' ... that the petitioners' requests are adequately addressed'
7. On page 10, paragraph 1., revise line 1 to read 'The petitioners' first and more general request'
8. On page 10, last paragraph, revise lines 2 and 3 to read ' ... nuclear power plants. And that consequently, no'
9. On page 11, 1st full paragraph, revise line 2 to read ' ... are adequate and whether there is reasonable assurance that they can be implemented. and it FEMA uses the' Revise lines 3 and 4 to read ' ... makes its findings as to whether under 10 CFR 50.47(a)(2) that the emergency plans' Revise line 5 to read ' ... will be taken under 10 CFR 50.47(a)(2). The NRC's findings are based upon' Revise lines 5 through 7 to read ' ... and determinations in this area. As to whether state and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented. Revise line 14 to read ' ... this information and considering that the existing regulatory structure already has requirements addressing the facilities of concern to the petitioners, no revision' Revise the last line to read ' ... to the petitioners' general'
10. On page 11, paragraph A., revise line 1 to read 'Require that children attending daycare and nursery schools be assigned to'
11. On page 11, last paragraph, revise line 1 to read ' ... petitioners requested'
12. On page 12, revise line 1 from the top to read ' ... 4) specifies provides that state and local government offsite emergency plans should designate' Revise lines 4 and 5 from the top to read ' ... 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'
13. On page 12, paragraph B., revise line 1 to read 'Require that children attending

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daycare and nursery schools ~~be are~~ provided'

14. On page 12, paragraph under the heading "NRC Review:", revise lines 2 through 4 to read ' ... 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' Revise line 5 to read ' ... 4) **specifies** ~~provides~~ that the state and local government offsite emergency plans **should** designate' Revise line 7 to read ' ... this provisions is' Revise lines 8 and 9 to read ' ... Part 50 **is** ~~would not be needed since the requested action is already provided for.~~'
15. On page 12, paragraph C., revise line 1 to read '**Require that c**Children attending daycare and nursery schools ~~be are~~ transported'
16. On page 13, 1st paragraph, revise line 3 to read ' ... Department of Transportation **or appropriate state authorities.**'
17. On page 13, in the paragraph under "NRC Review:" in the middle of the page, revise lines 2 and 3 to read ' ... considers the **existing requirements and guidance for** ~~currently required~~ agreements between bus drivers and local authorities **to be similar to the requested** detailed driver' Revise line 3 to read ' ... EV-2 (p. 10) **specifies that provides** bus' Revise line 4 to read ' ... and dosimetry **are to be provided** for the' Revise line 5 to read ' ... also **specifies that provides** for agreements' Revise line 6 to read ' ... local authorities are to be established for the' Delete the last sentence (Absent compelling evidence ...a roster.) and replace it with the following: NRC has made FEMA aware of the petitioners' concerns, and FEMA recently completed an emergency preparedness exercise at TMI that included issues related to transportation of students attending daycare centers and nursery schools. FEMA's final report on this exercise was issued on August 4, 2005. FEMA identified no deficiencies in this area.
18. On page 14, 1st paragraph, revise lines 1 and 2 to read ' ... and guidance **are adequate.** ~~adequately provide for this request.~~ **Although the petition requested that day care centers and nursery schools have the responsibility for conveying their emergency planning information to government officials, under current requirements, this communication burden rests with responsible responsibility resides with state and local government officials.** FEMA's GM EV-2 (p. 5) **specifies provides** that the'
19. On page 14, 2nd paragraph, revise line 1 to read '**NRC and FEMA expect l**Local governments **to should** assume' Revise line 2 to read ' ... area, and **to should** work closely' Revise line 3 to read ' ... (pp. 5 and 6) **specifies provides** that local'
20. On page 14, 3rd paragraph, revise line 1 to read ' ... (pp. 5 and 6) **specifies provides** that evacuation planning **is to shall** include a'
21. On page 15, in the paragraph after the bullets, delete the 1st sentence (Absent compelling evidence ... offices.) Revise line 3 to read '**Based on the above,** the petitioners **requested**'

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22. On page 16, 2nd paragraph under “NRC Review:”, revise line 1 to read ‘ ... (pp. 6 and 7) **specifies** ~~provides~~ that’ Revise line 2 to read ‘ ... nursery schools, **are to** demonstrate their’ Revise line 10 to read ‘ ... school activities **that might arise during exercise participation.** In addition, as mentioned in the response to request “E,” pursuant to FEMA guidance, state and local government officials should be contacting daycare centers and nursery schools regarding emergency plans for the facilities. The petition has’
23. On page 16, paragraph H., revise line 2 to read ‘ ... center, to **e**nsure no’
24. On page 17, 1st full paragraph, revise line 3 to read ‘ ... planning, has **determined that it is unnecessary** ~~declined~~ to require that’
25. On page 17, 2nd paragraph under “NRC Review:”, revise line 1 to read ‘ ... adequately **address** ~~provide~~ for this’ Revise line 2 to read ‘ ... EV-2 (p. 2) **specifies** ~~provides~~ that the’ Delete the last 2 sentence (There is no need ... Part 50.) and replace with the following: The Commission believes that parental notification via the EAS is adequate to assure that parents will be informed of their childrens’ location following an emergency evacuation.
26. On page 18, revise line 6 from the top to read ‘ ... petition **did not** ~~failed to~~ provide’
27. On page 18, last paragraph, delete the 1st sentence (As previously ...adequate.) Revise line 3 to read ‘ ... (p. 4) **specifies** ~~provides~~ that state and local government offsite emergency plans **are to** designate’
28. On page 19, line 4 from the top, insert a footnote after the period which reads: See March 23, 2005 letter from Roy Zimmerman to Eric J. Epstein and March 24, 2005 letter from Roy Zimmerman to Lawrence T. Christian (available on NRC’s ADAMS document system under the accession numbers ML050590344 and ML050590357, respectively).
29. On page 19, delete the sentence in lines 4 through 6 from the top (Absent compelling information ... Part 50.) and replace with the following: The Commission believes that the current publication practices are adequate.
30. On page 19, in the paragraph under “NRC Review:” in the middle of the page, line 1, insert a comma after “guidance”.
31. On page 19, last paragraph, revise line 1 to read ‘ ... (p. 6) **specifies** ~~provides~~ that a method **is to** exist’ Revise lines 3 and 4 to read ‘ ... emergency. ~~The Commission sees no added safety benefit of requiring a written script when FEMA~~ **has decided that it is unnecessary** ~~declined~~ to incorporate’ Revise the last line to read ‘ ... inadequate. **As a result, the Commission sees no added safety benefit in requiring a written script.**’
32. On page 20, paragraph 1., revise line 8 and 9 to read ‘ ... issue that ~~exists on a local level rather than a regulatory issue that exists on a national level and can be~~’

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33. On page 20, last paragraph, revise lines 1 and 2 to read 'The **requested rulemaking** ~~proposed revisions~~ would not enhance **openness or** public confidence ~~or openness~~ in our'
34. On page 21, revise line 1 from the top to read ' ... petitioners' **requests raise** ~~contentions are based on a potential~~ **issues** lack of compliance with **the** existing' Revise line 2 from the top to read ' ... and guidance. **The NRC staff does not believe that the contentions identify deficiencies in regulatory requirements.** ~~and do not provide a basis for amending the regulation.~~' Revise line 4 from the top to read ' ... definition of a "special' Revise line 5 from the top to read ' ... such, ~~it is the responsibility of state and local governments~~ **are currently required** to ensure' Delete the sentence in lines 6 through 8 from the top (The staff does ... process.) Revise line 11 from the top to read ' ... commitment to ~~of~~'
35. On page 21, paragraph 4., revise line 3 to read ' ... guidance already **adequately address** ~~provide for many of the petition~~' Delete the sentence in lines 6 and 7 (The NRC staff ... value.)
36. On page 22, paragraph 5., revise line 5 to read ' ... guidance already **adequately address** ~~provide for many of the petition~~'s requests.'
37. On page 22, last paragraph, revise the last 2 lines to read ' ... guidelines. Accordingly, ~~the petition is denied and forwarded to FEMA for review and investigation.~~ **NRC staff met with FEMA officials to assure an understanding of this issue for consideration by FEMA as reflected in separate letters to the petitioner and TMI-Alert Chairman, Eric Epstein dated respectively, March 23, 2005 and March 24, 2005. [Insert here a footnote which reads: FEMA did evaluate a May 3, 2005 Emergency Planning exercise at TMI. NRC understands that during this exercise FEMA reviewed aspects of emergency planning involving nurseries and daycare centers. No deficiencies were identified by FEMA during the exercise. FEMA's final report on the exercise was issued on August 4, 2005.] Copies of those letters are available through the NRC's ADAMS document system and can be located using accession numbers ML050590344 and ML050590357, ~~respectively.~~ The NRC staff will continue to work with FEMA to ensure emergency planning exercises are appropriately focused and provide adequate assurance regarding compliance with NRC and FEMA regulations and guidance.'**
38. Changes to the letter to the petitioner
39. On page 1, paragraph 4, revise lines 4 and 5 to read ' ... area. Accordingly, **the NRC staff met with FEMA to discuss these issues and** your petition **was** ~~is denied and~~ forwarded to FEMA' Insert a footnote at the end of the paragraph which reads: FEMA did **evaluate** a May 3, 2005 Emergency Planning exercise at TMI. NRC understands that during this exercise FEMA did look at aspects of emergency planning involving nurseries and daycare centers. No deficiencies were identified by FEMA during the exercise. FEMA's final report on the exercise **was issued on August 4, 2005.**

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cc: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
CFO
OCA
OPA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR

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January 19, 2007

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary */RA/*

SUBJECT: STAFF REQUIREMENTS - SECY-06-0228 - DENIAL OF A
PETITION FOR RULEMAKING TO CODIFY FEDERAL
EMERGENCY MANAGEMENT AGENCY GM EV-2,
"PROTECTIVE ACTIONS FOR SCHOOL CHILDREN," INTO THE
EMERGENCY PLANNING REGULATIONS IN 10 CFR PART 50
(PRM-50-81)

The Commission has approved the staff's recommendation to deny the petition for rulemaking, PRM-50-81. In the absence of any significant new information, there is no reason for the Commission to revisit the issue at this time.

cc: Chairman Klein
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
CFO
OCA
OPA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR

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