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RELATED CORRESPONDENCE DOCKET NUMBER 50-443/444-0C  
THE COMMONWEALTH OF MASSACHUSETTS  
PROD. & UTIL. FAC.

DEPARTMENT OF THE ATTORNEY GENERAL

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OFFICE OF THE ATTORNEY GENERAL  
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JAMES M. SHANNON  
ATTORNEY GENERAL

March 3, 1988

David Meyer, Chief  
Program Procedures Branch  
Federal Emergency Management Agency  
Mail Stop - 4000 MNBB  
Washington, DC 20555

Re: Criteria for Utility Offsite Planning and Preparedness

Dear Mr. Meyer:

Enclosed please find Comments of Massachusetts Attorney General James M. Shannon in Opposition to NUREG-0654/FEMA/REP-1 REV. 1, Supp. 1, "Criteria for Utility Offsite Planning and Preparedness. An extension of time until March 7, 1988 was granted by FEMA Staff on Wednesday, February 24 to file such comments.

Thank you for your attention to this matter.

Very truly yours,

Frank W. Ostrander, Chief  
Nuclear Safety Unit  
(617) 727-5575

FWO/BT

Enc.

cc: Seabrook Service List

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UNITED STATES OF AMERICA  
FEDERAL EMERGENCY MANAGEMENT AGENCY

COMMENTS OF MASSACHUSETTS ATTORNEY GENERAL  
JAMES M. SHANNON IN OPPOSITION TO NUREG-0654/FEMA-REP-1  
REV. 1, SUPP. 1, "CRITERIA FOR UTILITY OFFSITE  
PLANNING AND PREPAREDNESS"

MARCH 3, 1988

UNITED STATES OF AMERICA  
FEDERAL EMERGENCY MANAGEMENT AGENCY

COMMENTS OF MASSACHUSETTS ATTORNEY GENERAL  
JAMES M. SHANNON IN OPPOSITION TO NUREG-0654/FEMA-REP-1  
REV. 1, SUPP. 1, "CRITERIA FOR UTILITY OFFSITE  
PLANNING AND PREPAREDNESS"

MARCH 3, 1988

These comments reflect the opposition of the Commonwealth of Massachusetts to the FEMA criteria for review of a utility radiological emergency response plan in those circumstances in which responsible local and state officials have found adequate emergency planning infeasible and have not submitted governmental plans for review. The proposed FEMA criteria are contrary to the lessons learned by FEMA from years of experience as the expert federal agency in offsite emergency planning for radiological emergencies. The criteria fail to provide assurance that adequate protective measures can and will be taken under a utility plan in the event of a radiological emergency. The criteria violate provisions of existing FEMA rules and were implemented without prior notice and comment in violation of the Administrative Procedure Act.

1. Because they rely on assumptions with no basis in fact and are directly contrary to FEMA's experience, the criteria fail to assure that adequate protective measures can and will be taken in a radiological emergency.

Prior to the final adoption of an amendment of the provisions of 10 C.F.R. 50.47 by the Nuclear Regulatory Commission (NRC) on October 29, 1987, FEMA's expert view was clearly that a utility plan could not provide the protection to the public that a state and local government plan would provide. FEMA recognized the necessary role that state and local officials must play in providing adequate emergency planning and preparedness. In an internal memorandum commenting on the proposed NRC amendments to 10 C.F.R. 50.47, FEMA's expert staff comments were explicit on this point:

FEMA has consistently and repeatedly taken the position that such participation [state and local] is essential to a finding of adequacy of offsite preparedness around nuclear power plants. While the NRC's proposal envisions compensating measures by the licensee and good faith efforts by the licensee to gain the cooperation of state and local governments, the basic premise for the rule making is non-cooperation. It is, therefore, questionable whether compensatory measures and other overtures by the licensee will change a situation where the state and the local governments are steadfast in their refusal to cooperate. This cooperation is critical from FEMA's viewpoint.

Wherever the changed regulatory philosophy toward preparedness would be applied, the integrated onsite-offsite approach, which has been considered essential to adequate preparedness, would be put in jeopardy. Next in importance to state and local government cooperation in offsite planning and

preparedness, is the interaction that must take place between the licensee and offsite authorities and the general public. This interaction is best illustrated in the required joint exercises, which would be waived under the NRC proposal.

. . .

Further, this shift changes the emphasis from preplanning to more ad hoc arrangements within the plume exposure pathway. Under the current regulatory philosophy, it is expected that all significant emergency functions should be preplanned, and ad hoc arrangements are only relied upon for worst case or atypical accident consequences. Under the proposed regulatory amendment, this emphasis would be lost since preplanning is devalued and ad hoc arrangements, arising from the assumed participation of non-cooperating governmental jurisdictions, would have to be relied upon for the protection of public health and safety.

February 27, 1987 letter from David McLoughlin to Congressman Markey and enclosed memorandum (a copy is attached as Exhibit 1).

In its formal comments to the NRC on the March 1987 proposed changes to 10 C.F.R. 50.47, FEMA restated the concerns of its staff and observed that in the absence of state and local participation, FEMA's experience was that there was no basis on which to answer the ultimate question of whether adequate protective measures can and will be taken in a radiological emergency. See 44 C.F.R. 350.5(b). FEMA stated:

In February 1986, FEMA participated in an exercise that did not include state and local governments. The roles of key government officials were played by FEMA employees. From this experience, FEMA concludes that the practice of simulating governmental participation has several important consequences. First, the real-time interaction between officials and other emergency responders is not realistically

tested. That compromises the quality of the findings which FEMA is able to make about the preparedness of those other responders. Secondly, the preparedness of the state and local governments is not demonstrated in any meaningful sense. As a result, the conclusions that FEMA would be called on to make about the probable response of state and local governments would be based largely on conjecture. FEMA is very reluctant to certify that adequate protective measures can be taken where any finding would be based on such a degree of conjecture.

FEMA Comments, page 3, (Attached as Exhibit 2).

That a paper plan that is not realistically exercised is an inadequate indicator of the effectiveness of an emergency plan is hardly a new position. FEMA's rules require an exercise with the participation of state and local officials before a plan can be found adequate. See 50 C.F.R. 350.9(a).

The criteria ignore this experience and FEMA's prior policy statements. In place of requirements for demonstrated preparedness and actual performance capability, assumptions are substituted into the criteria, without any basis in fact, that state and local governments will implement a utility plan and have the resources sufficient to do so.

Thus, FEMA now proposes to allow its review of utility emergency plans to become a paper game in which state and local implementation of adequate protective measures to protect the public are simply assumed to occur. Such a wholesale substitution of assumption for investigated fact is not adequate to meet FEMA's responsibility to the public. The public health and safety is not adequately protected by the type of wishful thinking exemplified by the proposed criteria.

Following the accident at Three Mile Island and the recommendations of the various commissions which examined the NRC's shortcomings in emergency planning, FEMA was designated by the President to be the lead agency in emergency planning because of its expertise and experience. FEMA's earlier concerns noted above reflect that experience and expertise. The criteria should be revised to require adjudicated facts rather than assumptions when FEMA makes its judgment on the question of whether adequate protective measures can and will be provided.

2. The criteria violate provisions of FEMA's own Rules.

It is fundamental that an administrative agency must follow its own rules. FEMA's rules for review of emergency plans are set forth in 44 C.F.R. Part 350. FEMA is explicitly prohibited by its own regulations from adopting and using the proposed criteria and conducting any review or evaluation of a utility offsite plan:

The regulation in this part does not apply to, nor will FEMA apply any criteria with respect to, any evaluation, assessment or determination regarding the NRC licensee's emergency plans or preparedness, nor shall FEMA make any similar determination with respect to the integration of offsite and NRC licensee emergency preparedness except as these assessments and determinations affect the emergency preparedness of state and local governments.

44 C.F.R. 350.4 (emphasis supplied).

The proposed criteria suggest that authority for their implementation is found in the October 29, 1987 NRC amendments to 10 C.F.R. 50.47(c)(1) and in the April 18, 1985 FEMA/NRC Memorandum of Understanding ("MOU"). However, FEMA's regulations cannot be amended by the NRC. Moreover, 10 C.F.R. 50.47(c)(1) makes no provision for or requirement of FEMA review of utility-only plans. FEMA remains responsible for review of state and local plans under 50.47(a)(2) but is not given any role under 50.47(c). Furthermore, FEMA and the NRC cannot negotiate away a FEMA regulatory requirement by means of a memorandum. In fact, the memorandum of understanding makes no provision for FEMA review of utility plans. 50 Fed. Reg. 15485 (April 18, 1985). The MOU was merely a procedural maneuver permitting FEMA to submit interim findings on emergency plans. There is no mention in the MOU of a shift by FEMA from review of governmental plans to utility plans.

Thus, the proposed criteria applying for utility plans are unlawful. FEMA would have to amend 44 C.F.R. Part 50 before the proposed criteria could be implemented.<sup>1/</sup>

3. If the proposed criteria purport to be amendments to FEMA's rules they have been implemented in violation of the procedural requirements of 5 USC 553.

FEMA is the federal agency responsible for establishing and coordinating federal review and policies for emergency planning.

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<sup>1/</sup> Apparently, as of September 1987, FEMA was of the same view. Attached as Exhibit 3 are draft amendments to 44 C.F.R. Part 350 which include an amendment to 44 C.F.R. 350.4. Those amendments have not yet been published for comment.

Executive Order 12148. 42 USC 5131 (1982). Thus it is FEMA's obligation to issue its own regulations concerning its actions in reviewing emergency plans. FEMA has done so for its review of radiological emergency response plans in 44 C.F.R. Part 350.

As noted above, FEMA's existing regulations are geared solely to the review of state and local plans and prohibit its review of utility plans. 44 C.F.R. 350.1 clearly states the purpose of FEMA's regulations:

The purpose of the regulation in this part is to establish policy and procedures for review and approval by the Federal Emergency Management Agency (FEMA) of state and local emergency plans and preparedness for emergency which may occur at a commercial nuclear power facility. Review and approval of these plans and preparedness involves preparation of findings and determinations of the adequacy of the plans and capabilities of state and local governments to effectively implement the plans.

The Administrative Procedure Act requires FEMA to provide public notice and an opportunity for public participation through comments before a rule can be amended. 5 USC 553 (1982). FEMA has not provided any notice of any intent to amend 44 C.F.R. Part 350. Therefore, the criteria cannot be implemented.

Assuming that the criteria, although designated as "guidance," are interpreted as regulations that have amended the plain meaning of 44 C.F.R. 350.4, the notice and comment provisions of the Administrative Procedure Act, 5 USC 553, also prohibit implementation of the criteria until after the notice

and comment requirements are met.<sup>2/</sup> In simultaneously publishing and applying the criteria, FEMA has failed to comply with the requirements of 5 USC 553. Therefore, if they are intended to amend 44 C.F.R. Part 350, the criteria must be withdrawn until all of the requirements of the Administrative Procedure Act are met.

4. Adoption of the proposed criteria by FEMA violates its legal obligations to function as lead agency for offsite emergency planning.

By Presidential order, the FEMA is to function as the lead agency for offsite radiological emergency planning. In this role, FEMA has primary responsibility for review and assessment of emergency planning. This responsibility reflects the expertise and experience of FEMA in this regard as well as the considered determination by Congress in 1980 that the NRC alone should no longer determine what standards or criteria should be used to evaluate offsite emergency planning and should no longer conduct such evaluations. See Pub. L. 96-295, § 109(b)(1)(A) and (B)(ii), 94 Stat. 784 (1980).

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<sup>2/</sup> Both the NRC and one of the utilities most affected by the criteria, Public Service Company of New Hampshire, apparently do not intend the comment period to produce any meaningful changes in the criteria as they are applied to the utility plan for Massachusetts. See the attached December 18, 1987 letter from George S. Thomas and December 2, 1987 Memorandum from Frank J. Congel (Exhibits 4 and 5). Neither apparently does FEMA. Indeed the criteria's key assumptions are to be used to evaluate the Massachusetts plan prior to the close of the comment period. See the attached January 15, 1988 Memorandum from RAC Chairman Donovan (Exhibit 6).

However, although FEMA informed the NRC that it disapproved of a rule amendment that would no longer require state and local governmental participation prior to plant licensing, FEMA has adopted these criteria which have the same result. Moreover, from an examination of the process by which these criteria were drafted and adopted it emerges that FEMA has given up its responsibilities as lead agency and yielded to NRC pressure to adopt criteria actually drafted by the NRC.<sup>3/</sup> This agency ventriloquism has one agency telling another what it wants that agency to say even though FEMA has lead agency responsibility in precisely this regard. Such agency process is simply unacceptable.

5. Detailed comments about the criteria

In Exhibit 9, the Commonwealth presents its detailed comments on the criteria document beginning with several general comments and then referencing detailed comments by Planning Standard and Evaluation Criteria number:

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<sup>3/</sup> Attached as Exhibits 7 and 8 are memoranda that indicate that the NRC and not FEMA wrote these criteria and that "FEMA was requested by the NRC" to adopt the all-important planning assumptions which, as noted, vitiate any meaningful planning review. See Exhibit 8.

Exh.  
1



# Federal Emergency Management Agency

Washington, D.C. 20432

FEB 27 1987

The Honorable Edward J. Markey  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Markey:

Director Beaton has asked me to respond to your February 19, 1987, letter in which you requested information on FEMA's "role in the inception and development" of a Nuclear Regulatory Commission proposed rule which would permit the licensing of nuclear power plants where State and local governments do not cooperate in the emergency planning process.

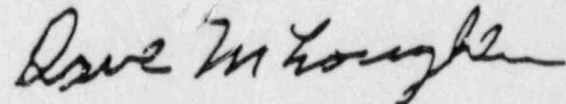
The only discussions between FEMA officials and outside sources on this proposed rulemaking were with the NRC staff. These discussions were limited to the following:

- 1) Late in December 1986, Mr. Martin G. Malsch, Deputy General Counsel, NRC, telephoned Mr. Spence W. Perry, General Counsel, FEMA and reported that NRC was considering a change in its regulations to deal with situations where state and local governments fail to participate in offsite emergency planning. After receipt of a draft of the proposed rule change, Mr. Perry provided Mr. Malsch his informal comments by telephone. He said that he would not comment on the appropriateness of the NRC proposing the rule in the context of its own licensing authority, and that if the NRC believes that offsite planning and preparedness is essential to its licensing process, then the involvement of state and local officials is the most preferred approach. Mr. Perry also expressed concern for the continued participation of state and local governments in the existing process of planning, and the testing of plans in exercises around operating nuclear power plants, if such a rule were adopted. Mr. Perry emphasized that these comments were his initial impressions as the Agency's lawyer, not the official position of FEMA.
- 2) Mr. Richard W. Krums, Assistant Associate Director, Natural and Technological Hazards, State and Local Programs and Support, FEMA, was provided an undated copy of the draft staff paper on the proposed rulemaking by Mr. Edward L. Jordan, Chief, Emergency Preparedness and Engineering Response Division, Office of Inspection and Enforcement, NRC, on January 20, 1987. Mr. Krums, not knowing that the NRC staff proposal was signed and sent to the Commission provided essentially the same comments, made previously by Mr. Perry to Mr. Jordan by telephone on February 6, 1987. The same day I called Mr. Victor Stello, the Executive Director for Operations at NRC with essentially the same comments. I, too, was unaware that the NRC staff paper had been sent to the Commission.

Since the February 6, 1997, NRC staff paper to the Commission (SECY-97- stated that final views of FEMA on the proposed rulemaking would be solicited during the comment period, the FEMA staff has begun to formulate a recommended position. The principal, initial concerns expressed by the staff are in the enclosed draft. The views expressed in this draft should not be considered the FEMA official position. It should not be released to other sources. This draft, along with other comments that the staff might prepare, will be considered by FEMA senior management. We plan to provide NRC with a formal FEMA position during the comment period which the Commission has approved.

If you should need further assistance, please have a member of your staff contact the Office of Congressional Relations at 646-4500.

Sincerely,



Dave McLoughlin  
Deputy Associate Director  
State and Local Programs  
and Support

Enclosures

cc: The Honorable Philip R. Sharp, Chairman  
Subcommittee on Energy and Power

DRAFT

NOTE: This draft was prepared by FEMA staff for consideration of FEMA Senior Management in the event NRC decided to issue the proposed rule for comment and requested FEMA to provide its formal views. The draft, therefore, should not be released to other sources.

Principal Concerns about the NRC Proposed Rulemaking  
to deal with the lack of State and Local Government  
Cooperation in Offsite Emergency Planning

We have the following principal concerns about the NRC proposal.

1. The Impact of absence of State and local government participation in the planning and preparedness process.

FEMA has consistently and repeatedly taken the position that such participation is essential to a finding of adequacy of offsite preparedness around nuclear power plants. While the NRC's proposal envisions compensating measures by the licensee and good faith efforts by the licensee to gain the cooperation of state and local governments, the basic premise for the rule making is non-cooperation. It is, therefore, questionable whether compensatory measures and other overtures by the licensee will change a situation where the state and for local governments are steadfast in their refusal to cooperate. This cooperation is critical from FEMA's viewpoint. We conclude that NRC has shared this viewpoint, since NRC's current regulations provide that no operating license will be issued unless a finding is made that there is reasonable assurance that adequate protective measures can and will be taken in the event of an radiological emergency. In this connection, we note that NRC has not used its statutory authority to license a nuclear power plant in the absence of a FEMA approved state and local government plans, if the commission determines that there is a state, local or utility plan which provides reasonable assurance that public health and safety is not endangered by the operation of the facility concerned.

2. The regulatory philosophy reflected in the proposed rule making is a retreat from the position adopted by the Commission in 1980, (in the post TMI environment), which accorded emergency preparedness a status of importance essentially equal to siting, design, construction and engineered safety systems in their licensing decisions.

The effect of this shift in regulatory philosophy is to assign a subordinate role to emergency planning and preparedness. Notwithstanding the intent of the NRC to have it apply only to the limited number of cases where state and local governments are non-cooperative, other State and local governments could be expected to follow the non-cooperative route, even where there are operating plants.

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NOTE: This draft was prepared by FEMA staff for consideration of FEMA Senior Management in the event NRC should wish to issue the proposed rule for comment and requested FEMA to provide its formal views. The draft, therefore, should not be released to other sources.

wherever the changed regulatory philosophy toward preparedness would be applied, the integrated onsite-offsite approach, which has been considered essential to adequate preparedness, would be put in jeopardy. Next in importance to State and local government cooperation in offsite planning and preparedness, is the interaction that must take place between the licensee and offsite authorities and the general public. This interaction is best illustrated in the required joint exercises, which would be waived under the NRC proposal.

Further, this shift changes the emphasis from preplanning to more ad hoc arrangements within the plume exposure pathway. Under the current regulatory philosophy, it is expected that all significant emergency functions should be preplanned, and ad hoc arrangements are only relied upon for worst case or atypical accident consequences. Under the proposed regulatory amendment, this emphasis would be lost since preplanning is devalued and ad hoc arrangements, arising from the assumed participation of non-cooperating governmental jurisdictions, would have to be relied upon for the protection of public health and safety.

### J. The Issue of States Rights.

States have increasingly asserted their right to be (or not to be) involved in the offsite planning and preparedness at nuclear power plants and have been led to believe that they have this right through NRC and FEMA regulations and the manner in which these regulations have been applied.

FEMA believes that the non-cooperative stance of some State and local governments stems from a genuine concern for the health and safety of the people living in the vicinity of nuclear power plants. We believe these rights and concerns should be respected. We also believe that unequivocal assurance, that the public health and safety can and will be protected without State and local participation in offsite emergency preparedness is necessary for the nuclear power plants in question to be licensed. Notwithstanding the compensatory measure discussed in the NRC staff paper we believe that the proposed rule making does not give that assurance.

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Exh.  
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Federal Emergency Management Agency  
Washington, D.C. 20472

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USNRC

April 28, 1987

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DOCKET NUMBER

PROPOSED RULE **PR-50**

(52 FR 6980)

OFFICE OF THE  
DOCKETING  
BRANCH

**2437**

Mr. Samuel J. Chilk  
Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: Comments on Proposed Rule on Licensing of Nuclear Power Plants Where State and Local Governments Decline to Participate in Offsite Emergency Planning

Dear Mr. Chilk:

This letter provides the comments of the Federal Emergency Management Agency (FEMA) on the Nuclear Regulatory Commission (NRC) proposed rule, "Licensing of Nuclear Power Plants Where State and Local Governments Decline to Participate in Offsite Emergency Planning." This proposed rule was published in the Federal Register on March 6, 1987 (52 FR 6980).

The NRC has proposed a change in its regulations which would permit the licensing of nuclear power plants where State and local governments decline to participate in the design, exercise, or implementation of offsite emergency preparedness planning. Under those circumstances, the proposed rule change would permit the applicant to be licensed upon showing that (1) its inability to comply with the normal emergency planning requirements could be remedied or adequately compensated for by reasonable cooperation by the State and local governments, (2) the applicant has made a good faith and sustained effort to obtain this cooperation, (3) the plans developed by the applicant include all effective measures to compensate for the lack of cooperation which are reasonable and feasible under the circumstances and which take into account a possible State or local response to an actual emergency, and (4) the applicant has provided copies of the plan to all governments which would have otherwise have participated and has assured them that it stands ready to cooperate with them.

FEMA notes, as a first premise to its comments, that, under the Atomic Energy Act, legal responsibility for the licensing of nuclear power plants is vested exclusively in the NRC. In setting standards for licensure, the Commission defines the threat to be prepared against, and it is the Commission which determines what level of preparation is necessary to meet the defined threat. Prior to the incident at the Three Mile Island Nuclear Power Plant in March 1979, there was no licensing requirement for offsite emergency planning and preparedness. Following that incident and the report of the Kemeny Commission in the same year, the NRC strengthened its regulatory requirement that offsite

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emergency response planning and preparedness be instituted and be demonstrated adequate to protect the public before new licenses would be issued. It also adopted the Kemeny Commission recommendation that FEMA should take the lead responsibility for offsite emergency plan evaluation. Additional requirements were established to insure such planning and preparation would be accomplished at previously licensed plants.

As a second premise, FEMA acknowledges that decisions by the NRC on obtaining and maintaining operating licenses are based in part on a composite review of offsite emergency capabilities and those provided by the utility within the plant. The NRC has the authority to determine the relative importance of offsite emergency preparedness in the licensing decision. This statement of FEMA's views on the proposed rule is made on the assumption that adequate offsite emergency planning and preparedness are still considered essential to obtaining and maintaining an operating license.

The proposed rule change is evidently intended to address the preemption issue which is at the center of the litigation over licensing of the Shoreham Nuclear Power Plant and the Seabrook Nuclear Power Plant. The particular issue is whether State and local governments should be able to do indirectly, by declining to participate in offsite emergency planning, what they may not do directly, that is, effectively veto the regulatory decisions of the NRC as to the siting and licensing of nuclear power plants. FEMA believes that this issue of the indirect veto of NRC decisions by state and local governments involves matters of significant public policy which may ultimately have to be resolved by the Congress.

While FEMA has no view as to the validity of any position the NRC may take on the preemption issue per se, the agency does note that the effect of the proposed change is to require a showing that the applicant has taken all reasonable and feasible steps to develop an offsite emergency plan and response capability rather than a showing that the emergency response plans offer reasonable assurance that adequate measures to protect the public can be taken in the event of an emergency.

On its face, the proposed rule incorporates a fundamental change in the way that offsite emergency planning would be evaluated by FEMA if the NRC requests findings and determinations as to whether offsite emergency plans are adequate and can be implemented. It would eliminate the need for full-participation exercises (those testing the capacity of State and local governments) both before and after licensing. Even if exercises are conducted, their value is seriously diminished without the participation of State and local governments. Full-participation exercises serve several important purposes. They are not only tools for evaluating written plans, they are also a means for their refinement and a training vehicle for the emergency personnel who will be called on to respond to an actual emergency. FEMA is of the view that State and local participation, as in the present approach, offers all concerned with offsite emergency planning and preparedness a wealth of experience and sensitivity to local circumstances, the loss of which could

have serious adverse consequences for such activities at existing and future plants.

In February, 1986, FEMA participated in an exercise that did not include State and local governments. The roles of key government officials were played by FEMA employees. From this experience, FEMA concludes that the practice of simulating governmental participation has several important consequences. First, the real-time interaction between officials and other emergency responders is not realistically tested. That compromises the quality of the findings which FEMA is able to make about the preparedness of those other responders. Secondly, the preparedness of the State and local governments is not demonstrated in any meaningful sense. As a result, the conclusions that FEMA would be called on to make about the probable response of State and local governments would be based largely on conjecture. FEMA is very reluctant to certify that adequate protective measures can be taken where any finding would be based on such a degree of conjecture.

The refinement of emergency plans which is the natural outcome of an exercise could also be compromised. The observations on which such refinements would be made are less valid without the participation of State and local governments. Furthermore, these governments may not be committed to changes in their usual ways of operating in emergencies. They are certainly not likely to change their routines during an actual emergency, even if they are convinced of the wisdom of the changes. The lack of training which would, in all probability, follow from holding exercises without State and local government participation would also increase the risk to the population of the affected emergency planning zones.

The existing regulatory scheme anticipates that there will be detailed, documented, provisions in advance of an emergency for the plume exposure emergency planning zone (10 miles out from the plant) and that ad hoc responses will be undertaken as necessary to supplement preplanned actions. This proposed rule would, in effect, sanction extensive across-the-board ad hoc responses. The proposed rule incorporates as a basic premise the assumption that State and local governments are likely to respond in an actual emergency because state law requires them to do so and also because that would presumably be the natural reaction of government officials in time of emergency. Even if the premise is valid, the ad hoc nature of their response could have unfortunate consequences. It does not assure that the full range of necessary actions will be taken. It does make it highly likely that any response will be uncoordinated. To the extent that utility company officials step into the roles of government officials, such as by recommending specific protective actions, there is a high probability that the public and emergency responders will receive conflicting instructions. FEMA also notes that, while the legal issue of the authority of utility officials to perform critical emergency functions in place of State and local officials has been considered by the courts of New York State, it has not been resolved throughout the country.

*Ad hoc response not good*

The concerns identified above relate to communities which have declared or demonstrated an unwillingness to take part in emergency response planning. FEMA is equally concerned that the incentive for cooperative State and local governments to continue their efforts could be diminished should the proposed rule be adopted.

In addition to the major concerns expressed above, FEMA questions several assumptions made explicitly or implicitly in the proposal:

1. The belief expressed by the NRC that State and local governments which have not been involved in emergency planning would nonetheless respond to an actual emergency and follow a comprehensive utility plan is open to question. FEMA has no data that would indicate what State and local government reactions might be in such circumstances.
2. The assumption that the proposed rule change will lessen the burden of litigation is debatable. The phase of the licensing hearings having to do with emergency planning will be no less intense than before and can be expected to be more complex because of the uncertainties introduced into the issue of the adequacy of offsite emergency preparedness. It follows that the potential litigation costs related to the proposed rule would probably be no less than under current regulations.
3. The claim that the requirement for planning placed on State and local governments by Title III of the Superfund Amendments and Reauthorization Act of 1986 would prompt more State cooperation regarding nuclear power plant emergency planning is not supported by facts. The State and local organizational structures for carrying out the provisions of Title III are mandated by law and, in most cases, existing structures will be used. It is not the presence of emergency management structures such as provided under Title III that is at issue. Rather, the question is whether those organizations are willing to participate in nuclear power emergency preparedness.

The adoption of proposed rule would not, in and of itself, resolve FEMA's difficulties in providing findings regarding reasonable assurance for offsite preparedness if state and local governments do not participate. The current Memorandum of Understanding between FEMA and the NRC charges FEMA with evaluating offsite emergency response plans against the criteria set out in the jointly developed guidance document, NUREG 0654/FEMA REP 1, Rev. 1. This guidance document assumes that there will be extensive involvement of state and local governments in the development and implementation of these plans. Without such involvement, many of the evaluation criteria cannot be satisfied. In addition, as noted above, the absence of state and local involvement frustrates or, at the very least, complicates the process of exercising the plans. If FEMA is not able to bring its evaluation process to a conclusion, it cannot offer the NRC the findings it requests. As the NRC

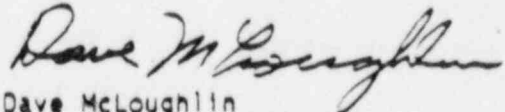
Mr. Samuel J. Chilk, Page 5.

staff seems to have recognized in its presentation of the proposed rule to the Commission, new guidance and standards for evaluation of such an emergency preparedness structure would have to be developed. As staff has recognized, this task is not insignificant and when considered in the light of requisite litigation bears major resource ramifications for this agency.

The NRC statements on this rule and our comments above make it clear that we share a common view that off-site emergency preparedness is best served by active state and local government participation. Should the NRC find the proposed rule appropriate and necessary, we would expect to continue our productive relationship. We would also hope that the NRC would carefully monitor the participation of state and local governments in order to adjust requirements that might discourage such participation.

We appreciate the opportunity to comment on this proposed rule.

Sincerely,



Dave McLoughlin  
Deputy Associate Director  
State and Local Programs  
and Support

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# DRAFT

FEDERAL EMERGENCY MANAGEMENT AGENCY

September 11, 1987

[Docket No. FEMA THD-3501]

44 CFR Part 350

Review and Approval of State and Local Radiological Emergency Plans and Preparedness

AGENCY: Federal Emergency Management Agency (FEMA)

ACTION: Proposed Amendment to Final Rule

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SUMMARY: Proposed amendments to FEMA's final rule, 44 CFR 350, are provided for public review and comment. This rule establishes policy and procedures for review and approval by the Federal Emergency Management Agency (FEMA) of State and local emergency plans and preparedness for coping with the offsite effects of radiological emergencies which may occur at commercial nuclear power facilities. The rule does not cover other Nuclear Regulatory Commission (NRC) licensed facilities, nor United States Government-owned, non-licensed nuclear facilities nor the transportation of radioactive materials. The rule sets out criteria which will be used by FEMA in reviewing, evaluating and approving plans and preparedness. It specifies how and where a State may submit plans. It describes certain processes the process by which FEMA makes findings and determinations as to the adequacy of State and local plans and the capability of State and local governments to effectively implement these plans and preparedness measures for specific sites. Such findings and determinations and, where appropriate, plan approvals, are to be submitted to the Governors of the affected States and to the NRC for its use in licensing proceedings. The current ~~this~~ rule was promulgated in proposed form on June 24, 1980, (45 FR 42321) and August 19, 1982, (47 FR 36386) for public comment and interim use and was published in final on September 28, 1983, (48 FR 4432). This rule reflects comments received on the proposed rule published on August 19, 1982.

EFFECTIVE DATE: Comments are due by (60-day comment period). FEMA intends to publish the amended rule after careful consideration of comments. This regulation remains ~~is~~ effective 30 days from the date of publication in the Federal Register as published on September 28, 1983, until proposed amendments become final.

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## SUPPLEMENTARY INFORMATION:

### Presidential Assignments

On December 7, 1979, the President, in response to the recommendations of the President's Commission on the Accident at Three Mile Island (known as the Kemeny Commission), announced, in part, a series of decisions and took a number of actions in the area of emergency planning and preparedness. Among other assignments, the President directed FEMA to:

- (1) Take the lead in offsite (radiological) emergency planning and response;
- (2) Develop and issue an updated series of (Federal) interagency assignments which delineate respective agency capabilities and responsibilities and clearly define procedures for coordination and direction for both emergency planning and response.
- (3) Address the need for improved advance preparation for emergencies and public education programs in the context of State emergency response plans.

In compliance with the directive to take the lead in offsite emergency planning and to issue interagency assignments, FEMA published on March 11, 1982, interagency assignments on March 11, 1982, in 44 CFR 351 (45 FR 10758). These assignments replace assignments set out in a Notice published in the Federal Register on December 24, 1975, (40 FR 59494). They provide for Federal interagency assistance to State and local governments in their radiological emergency planning and preparedness activities. Federal agency responsibilities for responding to a radiological accident are set forth in the Federal Radiological Emergency Response Plan (FREP) that was published on November 8, 1985, (50 FR 46542). ~~outlined in the National Radiological Emergency Preparedness Response Plan for Commercial Nuclear Power Plant Accidents (Master Plan) (45 FR 84910).~~ This "Master Plan" will be superseded by the Federal Radiological Emergency Response Plan (FREP) when it is published (projected for December 1983) in the Federal Register as an interim rule. The FREP is will become the Federal plan for coordinating and managing the Federal response to all types of radiological accidents including those occurring at licensed commercial nuclear power plants.

### Basis for FEMA Assignment

The Director, FEMA, pursuant to Reorganization Plan No. 3 of 1978 and Executive Order 12148 of July 20, 1979, establishes policies for, and coordinates civil emergency planning, management, mitigation and assistance functions of Executive agencies. The Director, FEMA, represents the President in working with State and local governments and the private sector to simulate vigorous participation in civil emergency preparedness, mitigation, response and recovery programs.

The term "civil emergency" is defined in 2-203 of Executive Order 12148 to include any accidental, natural, man-caused or wartime emergency or threat thereof, which causes or may cause substantial injury or harm to the population or substantial damage to or loss of property. This definition clearly encompasses an accident at a commercial nuclear power facility.

The Federal Civil Defense Act of 1950, as amended in 1980, provides at 50 U.S.C. App. S 2302(b) (6) for the development of emergency evacuation plans for areas in which nuclear power plants are located.

Under Section 201 of the Disaster Relief Act of 1974 (42 U.S.C. 5131), the Director is to establish a program of disaster preparedness which includes, among other matters, preparation of disaster preparedness plans for warning, emergency operations, training and exercises and coordination of Federal, State and local programs. Further, the Director is to provide technical assistance and grants to States in developing comprehensive plans and practical programs for preparation against disasters. The technical assistance and grant program provided under this authority may be used by States for planning and preparedness activities related to commercial nuclear power plant accidents.

Some of FEMA's predecessor agencies, as well as the NRC, have been involved in planning for radiological emergencies at commercial nuclear power facilities for some years. These activities were voluntary, as neither Federal law nor regulations required States or local governments to have peacetime nuclear emergency plans, nor required States with plans to test those plans.

The Atomic Energy Commission (AEC), later NRC, implemented a non-statutory program of planning and assistance to the States which included: the formation of a Federal Interagency Central Coordinating Committee (FICCC) (now the Federal Radiological Preparedness Coordinating Committee (FRPCC) under the chairmanship of FEMA); the preparation and issuance of the Guide and Checklist for Development and Evaluation of State and Local Government Radiological Emergency Response Plans in Support of Fixed Nuclear Facilities, reissued as NUREG-75/111; and the formation of subcommittees on training and exercises and emergency instrumentation. The Office of Emergency Preparedness (OEP), later the Federal Preparedness Agency (FPA), and now FEMA, issued descriptions of agency assignments. In January 1973, the OEP issued a statement which designated the AEC as lead agency.

On December 24, 1975, the FPA issued a revised and updated Federal Register Notice (40 FR 59494). Lead agency responsibility for "reviewing and concurring in State radiological emergency response plans," was assigned to the NRC and the planning assistance was expanded to include transportation of radioactive materials. NRC also issued guidance in a Handbook for Federal Assistance to State and Local Governments in Radiological Emergency Response Planning—NUREG-0093, June 1, 1976-revised January 1979, applicable to other Federal agencies. The number of involved agencies that agreed to the assignments increased from five to seven. These included the Environmental Protection Agency (EPA); the Department of Health, Education and Welfare, now the Department of Health and Human Services; the Defense Civil Preparedness Agency and the Federal Disaster Assistance Administration, whose functions have now been transferred to FEMA; the Department of Transportation; the Energy Research and Development Administration (now the Department of Energy) and the NRC. Nuclear Regulatory Commission.

This interagency process, with NRC as lead agency, continued for the next few years. The NRC established a program of voluntary concurrence and concurred in several State plans. The accident at the Three Mile Island nuclear power

facility, which occurred on March 28, 1979, caused a major rethinking of emergency planning and preparedness by the NRC and other agencies. The accident led to the Kemeny Commission Report and the Presidential actions.

To implement the President's assignment, the NRC and FEMA signed a Memorandum of Understanding (MOU) on January 4, 1980, describing each agency's responsibilities in preparing for emergencies at nuclear facilities and related activities (45 FR 5847). This MOU was revised and updated on November 1, 1980, (45 FR 82713) and April 18, 1985, (50 FR 15485).

The terms of the MOU apply to emergency preparedness for all commercial nuclear power plants, certain nuclear fuel cycle facilities and nuclear material licensees whose operations have a potential for significant accidental offsite releases of radiation. However, the parties intended that the initial program emphasis be placed on emergency preparedness at commercial nuclear power plants, the focus of this rule.

FEMA's responsibilities under the MOU are to:

- (1) Take the lead in offsite [radiological] emergency planning and review and assess State and local emergency plans for adequacy.
- (2) Complete, by June 1980, the review of State and local emergency plans in those States with operating reactors. (A report was submitted to the President on June 30, 1980.)
- (3) Complete, as soon as possible, the review of State and local emergency plans in those States with plants scheduled for operation in the near future. (This review is included in the June 30, 1980, Report to the President.)
- (4) Make findings and determinations as to whether State and local emergency plans are adequate and capable of implementation (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment adequacy).
- (5) Assume responsibility for emergency preparedness training of State and local officials.
- (6) Develop and issue an updated series of [Federal] interagency assignments which would delineate respective agency capabilities and responsibilities and define procedures for coordination and direction for emergency planning and response. [These are described in 44 CFR 351 (47 FR 10758, March 11, 1982).]

The NRC responsibilities under the MOU are to:

- (1) Assess licensee emergency plans for adequacy.
- (2) Verify that licensee emergency plans are adequately implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications and equipment adequacy).

- (3) Review the FEMA findings and determinations on the adequacy and capability of implementation of State and local plans.
- (4) Make decisions on the overall state of emergency preparedness (i.e., integration of emergency preparedness onsite, as determined by the NRC, and offsite, as determined by FEMA and reviewed by NRC) and issuance of operating licenses or (orders for) shutdown of operating reactors.

Thus, the lead for review of the adequacy of offsite emergency plans and their capability of implementation has been assigned to FEMA and there is no longer an NRC voluntary concurrence program for State emergency plans. The previous NRC "concurrences" do not satisfy all the requirements for FEMA approval of State and local plans under this regulation.

FEMA reviews, findings and determinations will be based upon guidance jointly issued by FEMA and NRC entitled Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants (NUREG-0654/FEMA-REP-1, Rev. 1, November, 1980). This guidance provides a basis for NRC licensees and State and local governments to develop radiological emergency plans and improve emergency preparedness associated with nuclear power facilities. The document combines the guidance to State and local governments with the guidance to the licensees of NRC and supersedes previous guidance and criteria published by FEMA and NRC. It is also intended for use by Federal officials in reviewing and assessing the adequacy of State, local and nuclear power facility operator emergency plans and preparedness. NUREG-0654/FEMA-REP-1, Rev. 1 contains a series of planning standards (which are part of this rule) and a listing of specific criteria (adopted by reference in this rule) for preparation and evaluation of the planning and preparedness activities of State and local governments as well as of the licensees of NRC.

This rule is intended to be consistent with the NRC emergency planning rule, [10 CFR Parts 50, including Appendix E, and ~~70~~ as amended].

The NRC will base its findings on a review of FEMA findings and determinations as to whether State and local plans are adequate and capable of being implemented. The regulation described in this part addresses FEMA's review function. NRC retains overall responsibility for making decisions under its enabling legislation in determining whether licensees should be issued or operations suspended.

This regulation describes a procedure by which FEMA reviews and assesses State and local emergency plans and preparedness to deal with a radiological emergency and "approves" such plans. Further, FEMA may use the data obtained in its approval process to support its findings in NRC licensing proceedings and any related court actions.

Insofar as FEMA is concerned, there is no legal requirement that a State or local government submit its plan to FEMA for review, and FEMA's failure to approve such plan is not accompanied by any sanction or refusal to accord a benefit. Insofar as the procedure may have economic, environmental or legal consequences or impact, these result from NRC action on its rule and from the role which FEMA plays because of the MOU in the NRC licensing process. NRC

has, in connection with its rule, adopted a "Finding of No Significant Impact" and has made an environmental assessment. The NPC assessment addresses the subject of cost, and it is clear from the cost data related to offsite planning and preparedness that this FEMA rule is not a significant regulation requiring a regulatory analysis under Executive Order 12291. Further, this rulemaking proceeding was initiated prior to January 1, 1981, and thus is not subject to the requirements of the Regulatory Flexibility Act for regulatory flexibility analysis.

An environmental assessment has been prepared in which FEMA has determined that this rule will not have a significant impact on the quality of the human environment.

Discussion on Proposed Amendments: (Once we have agreed upon revisions to rule, an overview of significant changes and supporting rationales will be added. An extensive section summarizing comments on the previous proposed rule and FEMA's response to them has been deleted since it is no longer relevant to our current proposed amendments.)

#### LIST OF SUBJECTS IN 44 CFR 350:

Nuclear power plants and reactors, radiation protection.

Accordingly, Part 350 is added to Subchapter E of Chapter I, Title 44 Code of Federal Regulations, as follows:

#### Part 350 - REVIEW AND APPROVAL OF STATE AND LOCAL RADIOLOGICAL EMERGENCY PLANS AND PREPAREDNESS

##### Section

- 350.1 Purpose.
- 350.2 Definitions.
- 350.3 Background.
- 350.4 Exclusions.
- 350.5 Criteria for review and approval of State and local radiological emergency plans and preparedness.
- 350.6 Assistance in development of State and local plans.
- 350.7 Application by State for review and approval.
- 350.8 Initial FEMA action on State plan.
- 350.9 Exercises.
- 350.10 Public meeting in advance of FEMA approval.
- 350.11 Action by FEMA Regional Director.

- 350.12 FEMA Headquarters review and approval.
- 350.13 Withdrawal of approval.
- 350.14 Amendment to State plans.
- 350.15 Appeal procedures.

Authority: 42 U.S.C. 5131, 5201, 50 U.S.C. App. 2253(g), Section 109, PL 96-295; Reorganization Plan No. 3 of 1978 (3 CFR 1978 Comp. 329); Executive Order 12127 (44 FR 19367); and Executive Order 12148 (44 FR 43239).

#### Section 350.1 Purpose.

The purpose of the regulation in this part is to establish policy and procedures for review and approval by the Federal Emergency Management Agency (FEMA) of State and local emergency plans and preparedness for the offsite effects of a radiological emergency which may occur at a commercial nuclear power facility. Review and approval of these plans and preparedness involves preparation of findings and determinations of the adequacy of the plans and capabilities of State and local governments to effectively implement the plans.

#### Section 350.2 Definitions.

As used in this part, the following terms and concepts are defined.

(a) Associate Director means the Associate Director, State and Local Programs and Support, FEMA or designee.

(b) Director means the Director, FEMA or designee.

(c) EPZ means Emergency Planning Zone.

(d) FEMA means the Federal Emergency Management Agency.

(e) NRC means the Nuclear Regulatory Commission.

(f) Regional Director means a Regional Director of FEMA or designee.

(g) Deficiency is a demonstrated inadequacy observed in an exercise that would generally cause a finding that offsite emergency preparedness was not adequate to provide reasonable assurance that protective measures can be taken to protect the health and safety of the public from the radiological consequences of an accident at a nuclear power facility. Generally, the identified inadequacy would have a direct and immediate adverse impact on organizational capabilities to protect public health and safety. A deficiency is also an inadequacy not observed in an exercise based on either a failure of an organization to adequately demonstrate its capabilities in an exercise or on information obtained on an organization's performance without observation.

(h) An Area Requiring Corrective Action (ARCA) is a demonstrated inadequacy observed in an exercise that although its correction is required in the next scheduled biennial exercise, it is not considered, by itself to adversely impact capabilities to protect public health and safety.

(i) Drill is a structured event aimed at testing, developing and maintaining specialized emergency response skills such as radiological monitoring. A drill is often a component of an exercise.

(j) Emergency Planning Zone (EPZ) is a generic area around a commercial nuclear facility used to assist in offsite emergency planning and the development of a significant response base. For commercial nuclear power plants, EPZ's of about 10 and 50 miles are delineated for the plume and ingestion exposure pathways respectively. For reactors with authorized power levels less than 250 Mw thermal and gas-cooled reactors, the size of EPZ's may be determined on a case-by-case basis.

(k) Plume Exposure Pathway refers to whole body external exposure to gamma radiation from the plume and from deposited materials and inhalation exposure from the passing radioactive plume. The duration of primary exposures in this pathway could range in length from hours to days.

(l) Ingestion Exposure Pathway refers to exposure resulting from the primarily from ingestion of radiologically contaminated water or foods such as milk and fresh vegetables. that have been contaminated with radiation. The duration of primary exposure in this pathway could range from hours to months.

(m) Exercise is an event that tests the integrated capabilities of organizations to respond to a simulated radiological emergency as demonstrated through the implementation of their emergency response plans and preparedness.

(n) Full Participation Exercise refers to a joint an exercise in which:  
(1) State and local government and licensee emergency personnel and other resources are mobilized engaged in sufficient numbers to adequately demonstrate and test verify their fundamental capabilities the capability to respond to a simulated radiological emergency the actions required by the accident scenario; (2) the integrated capabilities of organizations capability to adequately assess and respond to a radiological accident an accident at a commercial nuclear power plant are is tested and (3) the implementation of the observable elements portions of State and local and licensee plans and preparedness is tested.

(o) Partial Participation Exercise refers to the engagement of State and local government emergency personnel in an exercise sufficient to adequately test direction and control functions for protective action decisionmaking related to the appropriate establishment of emergency classification action levels and communication capabilities among affected State and local governments and the licensee. Partial participation, as defined, typically refers to the limited participation of State governments in an exercise; however, in some cases, this concept can be used to refer to an exercise in which local governments have limited participation. Limited participation of State and local organizations is permitted as a compensating measure for organizations that have responsibilities for two or more sites.

(p) Remedial Exercise refers to the testing of ~~to one that tests~~ organizational deficiencies identified in a ~~of a~~ previous joint exercise that are considered significant enough to impact on the protection of public health and safety. In addition to the participation of the organization(s) with deficiencies, remedial exercises may involve other State and local organizations and utilities if their participation is necessary to confirm corrective actions.

(q) Local Government refers to boroughs, cities, counties, municipalities, parishes, towns, townships and other local jurisdictions with the plume exposure pathway EPZ that have when any of these entities has specific roles in emergency planning and preparedness. in the EPZ.

(r) Site refers to the location at which there is one or more commercial nuclear power plants. A nuclear power plant is synonymous with a nuclear power facility.

#### Section 350.3 Background.

(a) On December 7, 1979, the President directed the Director of FEMA to take the lead in State and local emergency planning and preparedness activities with respect to nuclear power facilities. This included a review of the existing emergency plans both in States with operating reactors and those with plants scheduled for operation in the near future.

(b) This assignment was given to FEMA because of its responsibilities under Executive Order 12148 to establish Federal policies for and coordinate civil emergency planning, management and assistance functions and to represent the President in working with State and local governments and the private sector to stimulate vigorous participation in civil emergency preparedness programs. Under Section 201 of the Disaster Relief Act of 1974 (42 U.S.C. 5131), and other statutory functions, the Director of FEMA is charged with the responsibility to develop and implement plans and programs of disaster preparedness.

(c) There are two sections in the NRC's fiscal year 1982/1983 Appropriation Authorization (Public Law 97-415) that pertain to the scope of this rule. (Update legislative reference.)

(1) Section 5 provides for the issuance of an operating license for a commercial nuclear power plant by the NRC if it is determined that there exists a State, local or utility plan which provides assurance that public health and safety is not endangered by the operation of the facility. This section would allow the NRC to issue an operating license for such plants without FEMA-approved State and local government plans. (2) Section 11 provides for the issuance of temporary licenses for operating a utilization facility at a specific power level to be determined by the Commission, pending final action by the Commission on the application. Also, this section authorizes the NRC to issue temporary operating licenses for these facilities without the completion of the required (NRC) Commission hearing process. A petition for such a temporary license may not be filed until certain actions are completed including the submission of a State, local or utility emergency response plan for the facility.

(d) To carry out these responsibilities, FEMA is engaged in a cooperative effort with State and local governments and other Federal agencies in the development of State and local plans and preparedness to cope with the offsite effects resulting from radiological emergencies at commercial nuclear power facilities. FEMA is currently developing coordinated the development of the Federal Radiological Emergency Response Plan (FRRPP), which provides for will provide the overall Federal support to State and local governments, for all types of radiological incidents including those occurring at nuclear power plants. The FRRPP, when published (projected for December 1983), in the Federal Register as an interim rule will replace the The FRRPP was published in the Federal Register on November 8, 1987, (50 FR 46542) and is the operative Federal radiological response Plan. The FRRPP has received the concurrence of each of the 12 Federal agencies that could be involved in responding to a radiological emergency. The FRRPP replaces the National Radiological Emergency Preparedness/Response Plan for Commercial Nuclear Power Plant Accidents (Master Plan). The Master Plan was promulgated by FEMA on December 23, 1980 (45 FR 84910).

(e) FEMA has entered into a Memorandum of Understanding (MOU) with the NRC to which it will furnish assessments, findings and determinations as to whether State and local emergency plans and preparedness are adequate and continue to be capable of implementation (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualification and equipment adequacy). These findings and determinations will be used by NRC under its own rules in connection with its licensing and regulatory requirements and FEMA will support its findings in the NRC licensing process and related court proceedings.

(f) Notwithstanding the procedures set forth in this rule these rules for requesting and reaching a FEMA administrative approval of State and local plans, interim findings and determinations on the current status of emergency planning and preparedness around particular sites may be requested by the NRC under the joint NRC/FEMA MOU and provided by FEMA for use as needed in the NRC licensing process. These findings and determinations may be based upon plans currently available to FEMA or furnished to FEMA by the NRC through the NRC/FEMA Steering Committee. These findings may also be based upon FEMA's evaluation of preparedness as demonstrated in exercises. Interim findings provided under the MOU represent an extension of the 350 process established by this rule.

An environmental assessment has been prepared on which FEMA has determined that this rule will not have a significant impact on the quality of the human environment.

#### Section 350.4 Exclusions.

The regulation in this part does not apply to, nor will FEMA apply any criteria with respect to any evaluation, assessment or determinations regarding the NRC licensee's onsite emergency plans or preparedness, nor shall FEMA make any similar determination with respect to the integration of offsite and NRC licensee onsite emergency preparedness except as these assessments and determinations affect the emergency preparedness of State and local governments. The This regulation in this part applies only to State and local planning and preparedness with respect to emergencies at commercial nuclear power facilities

and does not apply to other facilities which may be licensed by NRC, nor to United States Government-owned, non-licensed facilities and the jurisdictions surrounding them nor to accidents involving the transportation of radioactive materials.

Section 350.5 Criteria for review and approval of State and local radiological emergency plans and preparedness.

(a) Section 50.47 of NRC's Emergency Planning Rule (19 CFR Parts 50 (Appendix E) and 70 as amended) and The joint FEMA-NRC Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants (NUREG-0654/FEMA-REP-1, Rev. 1, November 1980) that when apply insofar as FEMA is concerned to State and local governments, are to be used in reviewing, evaluating and approving State and local radiological emergency plans and preparedness and in making any findings and determinations with respect to the adequacy of the plans and the capabilities of State and local governments to implement them. Both the planning and preparedness standards and related criteria contained in NUREG-0654/FEMA-REP-1, Rev. 1 are to be used by FEMA and the NRC in reviewing and evaluating State and local government radiological emergency plans and preparedness. While FEMA believes the planning standards and evaluation criteria incorporated in NUREG-0654/FEMA-REP-1 represent the approved approach to establishing emergency planning and preparedness, State and local governments may request use of alternative approaches to FEMA based on their unique needs and situations. FEMA will coordinate the review and approval of such requests from State and local governments with the NRC. If alternative approaches are not requested and approved, the basis of FEMA's evaluation of offsite preparedness will be based on the planning standards and evaluation criteria of NUREG-0654/FEMA-REP-1. For brevity, only the planning standards contained in NUREG-0654/FEMA-REP-1, Rev. 1 are presented below. The evaluation criteria are adopted into this rule by reference.

- (1) Primary responsibilities for emergency response by the nuclear facility license, and by State and local organizations within the Emergency Planning Zones have been assigned, the emergency responsibilities of the various supporting organizations have been specifically established and each principal response organization has staff to respond to and augment its initial response on a continuous basis.
- (2) On-shift facility licensee responsibilities for emergency response are unambiguously defined, adequate staffing to provide initial facility accident response in key functional areas is maintained at all times, timely augmentation of response capabilities is available and the interfaces among various onsite response activities and offsite support and response activities are specified. (This standard applies only to NRC licensees but is included here for completeness.)
- (3) Arrangements for requesting and effectively using assistance resources have been made, arrangements to accommodate State and local staff at the licensee's near-site Emergency Operations Facility have been made and other organizations capable of augmenting the planned response have been identified.

- (4) A standard emergency classification and action level scheme, the bases of which include facility system and effluent parameters, is in use by the nuclear facility licensee, and State and local response plans call for reliance on information provided by facility licensees for determinations of minimum initial offsite response measures.
- (5) Procedures have been established for notification, by the licensee, of State and local response organizations and for the notification of emergency personnel by all response organizations; the content of initial and followup messages to response organizations and the public has been established; and means to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone have been established.
- (6) Provisions exist for prompt communications among principal response organizations to emergency personnel and to the public.
- (7) Information is made available to the public on a periodic basis on how they will be notified and what their initial actions should be in an emergency (e.g., listening to a local broadcast station and remaining indoors), the principal points of contact with the news media for dissemination of information during an emergency (including the physical location or locations) are established in advance and procedures for coordinated dissemination of information to the public are established.
- (8) Adequate emergency facilities and equipment to support the emergency response are provided and maintained.
- (9) Adequate methods, systems and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency condition are in use.
- (10) A range of protective actions has been developed for the plume exposure pathway EPZ for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.
- (11) Means for controlling radiological exposures, in an emergency, are established for emergency workers. The means for controlling radiological exposures shall include exposure guidelines consistent with EPA Emergency Worker and Lifesaving Activity Protective Action Guides.
- (12) Arrangements are made for medical services for contaminated injured individuals.
- (13) General plans for recovery and reentry are developed.

- (14) Periodic exercises are (will be) conducted to evaluate major portions of emergency response capabilities, periodic drills are (will be) conducted to develop and maintain key skills and deficiencies identified as a result of exercises or drills are (will be) corrected.
- (15) Radiological emergency response training is provided to those who may be called upon to assist in an emergency.
- (16) Responsibilities for plan development and review and for distribution of emergency plans are established, and planners are properly trained.
- (b) In order for State or local plans and preparedness to be approved, such plans and preparedness must be determined, based on the application of the criteria set forth in subpart a of this section, to adequately protect the public health and safety by providing reasonable assurance that State and local governments can and intend to effect appropriate protective measures offsite in the event of a radiological emergency.

Section 350.6 Assistance in development of State and local plans.

- (a) An integrated approach to the development of offsite radiological emergency plans by States, localities and the licensees of NRC with the assistance of the Federal Government is the approach most likely to provide the best protection to the public. Hence, Federal agencies including FEMA Regional staff, will be made available upon request to assist States and localities in the development of plans.
- (b) There now exists in each of the ten standard Federal Regions a Regional Assistance Committee (RAC) (formerly the Regional Advisory Committee) chaired by a FEMA Regional official and having members from the Nuclear Regulatory Commission, Department of Health and Human Services, Department of Energy, Department of Transportation, Environmental Protection Agency, the United States Department of Agriculture and Department of Commerce and the Department of the Interior and other Federal departments and agencies such as the Department of Defense, as appropriate. ~~Whereas in 44 CFR 351, the Department of Defense is listed as a potential member of the RACs, it is not listed in this rule because military nuclear facilities are not the subject of concern.~~ The RAC's will assist State and local government officials in the development of their radiological emergency response plans, and will review plans and observe exercises and assist in the evaluation of ~~to evaluate~~ the adequacy of these plans and related preparedness. This assistance does not include the actual preparation ~~writing~~ of State and local government plans by RAC members.
- (c) In accomplishing the foregoing, the RAC's will use the standards and evaluation criteria in NUREG-0654/FEMA-REP-1, Rev. 1, or approved alternative approaches, and will render such technical assistance as may be required, appropriate to their agency mission and expertise. In observing and evaluating exercises, the RAC's will identify, soon after an exercise, any deficiencies\* and other problem areas observed in

\*See Section 350.2(g) for definition of deficiency.

the planning and preparedness effort pertaining to the availability and use of including deficiencies in resources, training of staff, equipment, staffing levels and deficiencies in the qualifications of emergency personnel.

Section 350.7 Application by State for review and approval.

- (a) A State which seeks formal review and approval by FEMA of the State's radiological emergency plan shall submit an application for such review and approval to the FEMA Regional Director of the Region in which the State is located. The application, in the form of a letter from the Governor or from such other State official as the Governor may designate, shall contain one copy of the completed State plan, including coverage of response in the ingestion exposure pathway EPZ. The application will also include plans of all appropriate local governments. The application shall specify the site or sites for which plan approval is sought. For guidance on the local government plans that should be included with an application, refer to Part I.E. NUREG-0054/FEMA-REP-1, Rev. 1, entitled Contiguous Jurisdiction Governmental Emergency Planning (see e). Only a State may request formal review of State or local radiological emergency plans.
- (b) Generally, the plume exposure pathway EPZ for nuclear power facilities shall consist of an area about 10 miles (16 Km) in radius and the ingestion exposure pathway EPZ shall consist of an area about 50 miles (80 Km) in radius. The exact size and configuration of the EPZ's surrounding a particular nuclear power facility shall be determined by State and local governments in consultation with FEMA and NRC taking into account such local conditions as demography, topography, land characteristics, access routes and local jurisdiction boundaries. The size of the EPZ's are may be determined by NRC in consultation with FEMA on a case-by-case basis for gas cooled reactors and for reactors with an authorized power level less than 250 Mw thermal. The plans for the ingestion exposure pathway shall focus on such actions as are appropriate to protect the public from ingesting contaminated food and water.
- (c) A State may submit separately its plans for the EPZ's and the local government plans related to individual nuclear power facilities. The purpose of separate submissions is to allow approval of a State plan, and of the plans necessary for specific nuclear power facilities in a multiple-facility State, while not approving or acting on the plans necessary for other nuclear power facilities within the State. If separate submissions are made, appropriate adjustments in the State plan may be necessary. In any event, FEMA approval of State plans and appropriate local government plans shall be site-specific although States may submit an umbrella plan with site-specific annexes.
- (d) The application shall contain a statement that the State plan, together with the appropriate local plans, is, in the opinion of the Governor or his/her designee, State adequate to protect the public health and safety of its citizens living within the emergency planning zones for the nuclear power facilities included in the submission by providing reasonable

assurance that State and local governments can and intend to effect appropriate protective measures offsite in the event of a radiological emergency. The provision of this statement by State authorities does not negate the necessity of FEMA's evaluation and approval of State and local government radiological emergency planning and preparedness and the provision of FEMA's findings and determinations to the NRC for the Commission's use in making licensing decisions.

- (e) FEMA and the States will make suitable arrangements in the case of overlapping or adjacent jurisdictions to permit an orderly assessment and approval of interstate or interregional plans.

#### Section 350.8 Initial FEMA action on State plan.

- (a) The Regional Director shall acknowledge in writing within 20 ~~ten~~ days the receipt of the State application.
- (b) FEMA shall publish a notice signed by the Regional Director or designee in the Federal Register within 30 days after receipt of the application, that an application from a State has been received and that copies are available at the Regional Office for review and copying in accordance with 44 CFR 5.26.
- (c) The Regional Director shall furnish copies of the plan to members of the RAC for their analysis and evaluation.
- (d) The RAC shall make a detailed review of the State plan, including those of local governments, and assess the capability, of State and local governments to effectively implement the plan (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualification and equipment adequacy). The results of the RAC evaluation shall be provided to the Regional Director who will use them in making recommended findings to the Associate Director. Evaluation and comments of the RAC members will be used as part of the review process.
- (e) During the review process, in connection with the review, the Regional Director may make suggestions to States concerning perceived gaps of deficiencies in the plans, and the State may amend the plan at any time prior to forwarding to the Associate Director of FEMA.
- (f) Two conditions for FEMA approval of State plans (including local government plans) are the requirements for an exercise (see Section 350.9), and for public participation (see Sections 350.9 and 350.10.). These activities occur during the Regional review and prior to the forwarding of the plan to the Associate Director.

#### Section 350.9 Exercises.\*

- (a) Before a Regional Director can forward a State plan to the Associate Director for approval, the State, together with all appropriate local governments, must conduct a joint exercise of that State plan, involving

\*See Sections 350.2(h)++(m) (n)++(p) respectively for definitions of exercises, full participation exercises, and remedial exercises and ARCA's.

full participation\* of appropriate local government entities, the State and the appropriate licensee of the NRC. To the extent achievable, this exercise shall include participation by appropriate Federal agencies. This exercise shall be observed and evaluated by FEMA and by representatives of other Federal agencies with membership on the RAC's and by NRC with respect to licensee response. Within 48 hours of the completion of the exercise, a briefing involving the exercise participants and Federal observers shall be conducted by the Regional Director to discuss the preliminary results of the exercise. If the exercise discloses any deficiencies or ARCA's\* in the State and local plans, or the ability of the State and local governments to implement the plans, the FEMA representatives shall make them known promptly in writing to appropriate State officials. To the extent necessary, the State shall amend the plan to incorporate recommended changes or improvements or take other corrective measures, such as remedial exercises\*, to demonstrate to the Regional Director that identified weaknesses have been corrected.

- (b) The Regional Director shall be the FEMA official responsible for certifying to the Associate Director that an exercise of the State plan has been conducted, and that changes and corrective measures in accordance with Section 350.9(a) above have been made.
- (c) State and local governments that have fully participated in a joint exercise within one year prior to the effective date of this final rule will have continuing approval of their radiological emergency plans and preparedness by following the frequency indicated in (c)(1)-(4). State and local governments that have not fully participated in a joint exercise within one year prior to the effective date of this final rule will follow the frequency indicated in (c)(1)-(4) after completion of a joint exercise in which they have fully participated. If, in developing exercise schedules with State and local governments to implement the requirements in (c)(1)-(4), the Regional Director finds that unusual hardships would result, he may seek relief from the Associate Director.
  - (1) Each State which has a commercial nuclear power site within its boundaries or is within the 10-mile plume exposure pathway EPZ Emergency Planning Zone of such site shall fully participate in an exercise jointly with the nuclear power plant licensee and appropriate local governments at least every two years.
  - (2) Each State with multiple sites within its boundaries shall fully participate in a joint exercise at some site on a rotational basis at least every 2 years. When not fully participating in an exercise at some site, the State shall partially participate\*\* at that site to support the full participation of appropriate local governments. Priority shall be given to new facilities seeking an operating license from the NRC and which have not fully participated

\*See Sections 350.2(h) ~~++~~ (m) (n) ~~++~~ (p) respectively for definitions of exercises, full participation exercises, and remedial exercises and ARCA's.

\*\*See Section 350.2(o) for definition of partial participation exercises.

in a joint exercise involving the State, local governments and the licensee at that site. State and local governments will coordinate the scheduling of these exercises with the appropriate FEMA and NRC Regional Offices and the affected licensees.

(3) Each appropriate local government which has a site within its boundaries or is within the 10-mile emergency planning zone shall fully participate in a joint exercise with the licensee and the State at least every two years. For those local governments that have planning and preparedness responsibilities for more than one facility, the Regional Director may seek an exemption from this requirement by recommending alternative arrangements for approval by the Associate Director.

(4) States within the 50-mile emergency planning zone of a site shall exercise their plans and preparedness related to ingestion exposure pathway measures at least once every six ~~five~~ years in conjunction with a plume exposure pathway exercise at some site ~~at that site~~.

(5) Remedial exercises may be required to correct deficiencies observed in exercises conducted for continued FEMA approval. Should this occur, the FEMA Regional Director, in consultation with the FEMA Associate Director and the NRC, will determine the participation required from the States and/or local governments.

(d) Within 48 hours of the completion of an exercise conducted for continued FEMA approval, a briefing involving the exercise participants and Federal observers shall be conducted by the Regional Director to discuss the preliminary results of the exercise. If the exercise discloses any deficiencies in the State and local plans, or the ability of the State and local governments to implement the plans, the FEMA representatives shall make them known promptly in writing to appropriate State officials. To the extent necessary, the State shall amend the plan to incorporate recommended changes or improvements or take other corrective measures, such as remedial exercises, to demonstrate to the Regional Director that identified weaknesses have been corrected. The Regional Director shall forward his or her evaluation of and any recommended findings on the exercise conducted for continued FEMA approval to the Associate Director including the certification that requisite changes and corrective measures have been or will be made.

(e) Following the exercise conducted for continued FEMA approval, the Regional Director shall conduct a meeting in the vicinity of the nuclear power facility which will include the exercise participants, representatives from the NRC and other appropriate Federal agencies and the public and media as observers. The purpose of this meeting is to discuss the evaluation of the exercise. At the discretion of the Regional Director, written comments from the public and media may be submitted at or after the meeting. These comments will be taken into consideration by the Regional Director in his or her evaluation.

(f) After FEMA approval of a State and local plan has been granted, failure to exercise the State and local plans at the frequency and participation described in this section shall be grounds for withdrawing FEMA approval. (See Section 350.13.)

Section 350.10 Public meeting in advance of FEMA approval.

(a) During the FEMA Regional Office review of a State plan and prior to the submission by the Regional Director of the evaluation of the plan and exercise to the Associate Director, the FEMA Regional Director shall assure that there is at least one public meeting conducted in the vicinity of the nuclear power facility. The purpose of such a meeting, which may be conducted by the State or by the Regional Director, shall be to: (1) acquaint the members of the public in the vicinity of each facility with the content of the State and related local plans, and with the conduct of the joint exercise which tested the plans; (2) answer any questions about FEMA review of the plan and the exercise; (3) receive suggestions from the public concerning improvements or changes that may be necessary; and (4) describe to the public the way in which the plan is expected to function in the event of an actual emergency. The Regional Director should assure that representatives from appropriate State and local government agencies, and the affected utility appear at such meetings to make presentations and to answer questions from the public. The public meeting should be held after the first joint (utility, State and local governments) exercise at a time mutually agreed to by State and local authorities, licensee and FEMA and NRC Regional officials. This meeting shall be noticed in the local newspaper with the largest circulation in the area, or other such media as the Regional Director may select, on at least two occasions, one of which is at least two weeks before the meeting takes place and the other is within a few days of the meeting date. Local radio and television stations should be notified of the scheduled meeting at least one week in advance. Representatives from NRC and other appropriate Federal agencies should also be invited to participate in these meetings. If, in the judgment of the FEMA Regional Director, the public meeting or meetings reveal deficiencies in the State plan and/or the joint exercise, the Regional Director shall inform the State of the fact together with recommendations for improvement. No FEMA approval of State and local plans and preparedness shall be made until a meeting described in this paragraph shall have been held at or near the nuclear power facility site for which the State is seeking approval.

(b) If, after the conduct of a public meeting under 350.10a, significant changes are made to State and local emergency plans (e.g., change in the emergency planning zone that eliminates or adds jurisdictions) that impact on the way in which the plan is expected to be implemented, then another public meeting should be conducted consistent with the provisions of 350.12(a).

Section 350.11 Action by FEMA Regional Director.

(a) Upon completion of his or her review, including conduct of the exercise required by Section 350.9 and after the public meeting required by Section 350.10, the Regional Director shall prepare an evaluation of the State plan, including plans for local governments. Such evaluation shall be specific with respect to the plans applicable to each nuclear facility so that findings and determinations can be made by the Associate Director on a site-specific basis.

- (b) The Regional Director shall evaluate the adequacy of State and local plans and preparedness on the basis of the criteria set forth in Section 350.5, and shall report the evaluation with respect to each of the planning standards mentioned therein as such apply to State and local plans and preparedness.
- (c) The Regional Director shall forward the State plan together with his or her evaluation and other relevant record material to the Associate Director. Relevant record material will include the results of the exercise (i.e., deficiencies noted and corrections made), a summary of the deficiencies identified during the public meeting, recommendations made to the State and commitments made by the State for effecting improvements in its plans and preparedness and actions taken by the State.

Section 350.12 FEMA Headquarters review and approval.

- (a) Upon receipt from a Regional Director of a State plan, the Associate Director shall conduct such review of the State plan as he or she shall deem necessary. The Associate Director shall arrange for copies of the plan, together with the Regional Director's evaluation, to be made available to the members of the Federal Radiological Preparedness Coordinating Committee (FRPCC) and to other offices of FEMA with appropriate guidance relative to any assistance that may be needed in the FEMA review and approval process.
- (b) If, after formal submission of the State plan and the Regional Director's evaluation, the Associate Director determines that the State plans and preparedness:
  - (1) are adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that State and local governments can and intend to effect appropriate protective measures offsite in the event of a radiological emergency.
  - (2) are capable of being implemented (e.g. adequacy and maintenance of procedures, training, resources, staffing levels and qualification and equipment adequacy); the Associate Director shall approve in writing the State plan. The Associate Director shall concurrently communicate this FEMA approval to the Governor of the State(s) in question, the NRC and the pertinent Regional Director(s) and immediately shall publish in the Federal Register a notice to this effect.
- (c) If, after formal submission of the State plan, the Associate Director is not satisfied with the adequacy of the plan or preparedness with respect to a particular site, he or she shall concurrently communicate that decision to the Governor(s) of the State(s), the NRC and the pertinent Regional Director(s), together with a statement in writing explaining the reasons for the decision and requesting appropriate plan or preparedness revision. Such statement shall be transmitted to the Governor(s) through the appropriate Regional Director(s). The Associate Director shall immediately publish a notice to this effect in the Federal Register.

- (d) The approval shall be of the State plan together with the local plans for each nuclear power facility (including out-of-State facilities) for which approval has been requested. FEMA may withhold approval of plans applicable to a specific nuclear power facility in a multi-facility State, but nevertheless approve the State plan and associated local plans applicable to other facilities in a State. Approval may be withheld for a specific site until plans for all jurisdictions within the emergency planning zones of that site have been reviewed and found adequate.
- (e) Final responsibility for making determinations on the adequacy and approval of State and local government plans and preparedness under this rule and the NRC-FEMA Memorandum of Understanding shall be vested with the FEMA Associate Director.
- (f) ~~te~~ Within 60 90 days after the date of notification of approval for a particular nuclear power facility or within 60 90 days of any statement of disapproval of a State plan, any interested person may appeal the decision of the Associate Director to the Director; however, such an appeal must be made solely upon the ground that the Associate Director's decision, based on the available record, was unsupported by substantial evidence. (See Section 350.15 for appeal procedures.)

Section 350.13 Withdrawal of approval.

- (a) If, at any time after granting approval of a State plan, the Associate Director determines, on his or her own initiative, motion or on the basis of information another person supplied, that the State or local plan is no longer adequate to protect public health and safety by providing reasonable assurance that appropriate protective measures can be taken, or is no longer capable of being implemented, he or she shall immediately advise the Governor of the affected State, through the appropriate Regional Director and the NRC of that initial determination in writing. FEMA shall spell out in detail the reasons for its initial determination, and shall describe the deficiencies in the plan or the preparedness of the State. If, after four months from the date of such an initial determination, the State in question has not either (1) corrected the deficiencies noted or (2) submitted an acceptable plan for correcting those deficiencies, the Associate Director shall withdraw approval and shall immediately inform the NRC and the Governor of the affected State, of the determination to withdraw approval and shall publish in the Federal Register and the local newspaper having the largest daily circulation in the affected State notice of its withdrawal of approval. The basis upon which the Associate Director makes the determination for withdrawal of approval is the same basis used for reviewing plans and exercises, i.e., the planning standards and related criteria in NUREG-0654/FEMA-REP-1, Rev. 1.
- (b) In the event that the State in question shall submit a plan for correcting the deficiencies, the Associate Director shall negotiate a schedule and a timetable under which the State shall correct the deficiencies. If, on the agreed upon date, the deficiencies have been corrected, the Associate Director shall withdraw the initial determination and the

approval previously granted shall remain valid. He or she shall inform the Governor(s), the NRC, the pertinent Regional Director(s) and notify the public as stated in paragraph (a) of this section. If, however, on the agreed upon date, the deficiencies are not corrected, FEMA shall withdraw its approval and shall communicate its decision to the Governor of the State whose plan is in question, the NRC, the appropriate Federal agencies and notify the public as indicated above.

- (c) Within 30 days after the date of notification of withdrawal of approval of a State or local plan, any interested person may appeal the decision of the Associate Director to the Director; however, such an appeal must be made solely upon the ground that the Associate Director's decision, based on the available record, was unsupported by substantial evidence. (See Section 350.15 for appeal procedures.)

#### Section 350.14 Amendments to State plans.

- (a) The State may amend a plan submitted to FEMA for review and approval under Section 350.7 at any time during the review process or may amend a plan at any time after FEMA approval has been granted under Section 350.12. A State must amend its plan in order to extend the coverage of the plan to any new nuclear power facility which becomes operational after a FEMA approval or in case of any other significant change. The State plan shall remain in effect as approved while any significant change is under review.
- (b) A significant change is one which involves the evaluation and assessment of a planning standard or which involves a matter which, if presented with the plan, would need to have been considered by the Associate Director in making a decision that State or local plans and preparedness are: (1) adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency; and (2) capable of being implemented.
- (c) A significant change will be processed in the same manner as if it were an initial plan submission. However, the Regional Director may determine that certain procedures, such as holding a public meeting or a complete exercise would be unnecessary. The existing FEMA approval shall remain in effect while any significant changes are under review.
- (d) Changes, such as a change in a telephone number, that are not significant as defined in paragraphs (b) and (c) of this section, but are necessary to maintain currency of the plan, should be forwarded to the Regional Director.

#### Section 350.15 Appeal procedures.

- (a) Any interested person may appeal a decision made under Sections 350.12 and 350.13 of this Part, by submitting to the Director, FEMA, a written notice of appeal, within 60 90 days after the appearance in the Federal Register of the notice of decision relating to the matter being appealed.

The appeal must be addressed to the Director, Federal Emergency Management Agency, 500 C Street, S.W., Washington, D.C. 20472. The appeal letter shall state specific reasons for the appeal and include an offer to provide documentation supporting appellate arguments.

- (b) Upon receipt of an appeal, the Director or the Director's designee shall review the file, as submitted to the Associate Director, State and Local Programs and Support, by the Regional Director of the FEMA Region concerned, based on the information contained in the file and the appeal letter, with supporting documentation. The Director or the Director's designee shall decide whether or not the Associate Director's initial decision was supported by adequate substantial evidence in the file and is consistent with FEMA policy.
- (c) The decision of the Director or the Director's designee shall be published in the Federal Register as the final agency decision on the matter and shall not be reviewable within FEMA, except upon a showing that it was procured by fraud or misrepresentation. In addition to publication in the Federal Register, copies of the decision shall be forwarded to the appellant, the Governor(s) of the State(s) affected, the NRC and the affected licensee of the involved power facility.

---

Julius W. Becton, Jr.  
Director

Date:  
Billing Code 6718-01

Exh  
4



George S. Thomas  
Vice President Nuclear Production

Public Service of New Hampshire

New Hampshire Yankee Division

NYN-87143

December 18, 1987

United States Nuclear Regulatory Commission  
Washington, DC 20555

Attention: Document Control Desk

References:

- (a) Facility Operating License NPF-56, Construction Permit CPPR-136, Docket Nos. 50-443 and 50-444
- (b) PSNH Letter (NYN-87113), dated September 18, 1987, "Seabrook Plan for Massachusetts Communities", G. S. Thomas to USNPC
- (c) Federal Register Doc. 87-25439, filed November 2, 1987, "Evaluation of the Adequacy of Offsite Emergency Planning for Nuclear Power Plants at the Operating License Review Stage Where State and/or Local Governments Decline to Participate in Offsite Emergency Planning"
- (d) Federal Register Doc. 87-17112, Filed November 27, 1987, "Interim-Use Document; Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants (Criteria for Utility Offsite Planning and Preparedness)"; NUREG-0654/FEMA-REP-1, Rev. 1, Supp. 1

Subject: Seabrook Plan for Massachusetts Communities (SPMC)

Gentlemen:

In our letter of September 18, 1987 [Reference (b)], New Hampshire Yankee (NHY) transmitted a comprehensive utility plan, entitled "Seabrook Plan for Massachusetts Communities", which was submitted for NRC Staff and FEMA review pursuant to 10CFR50.33(g) and 10CFR50.47(c)(1). The SPMC was developed to address the sixteen (16) planning standards of 10CFR50.47(b) and NUREG-0654/FEMA-REP-1 as well as other planning concerns such as integration of utility, state, local and federal government response and interfacing with contiguous states.


Subsequent to our submittal of the SPMC, additional rules, guidelines and criteria were issued which define how the NRC and FEMA will evaluate the adequacy of utility-prepared offsite emergency plans in situations in which state and/or local governments decline to participate in offsite emergency planning. With regards to the NRC's recent changes to its emergency planning rules [Reference (c)], it is NHY's expectation that the NRC review of the SPMC would be consistent with the recently adopted rule changes, which became effective December 3, 1987. Additionally, the

NRC and FEMA have recently issued NUREG-0654/ FEMA-REP-1, Supp. 1 for interim-use, public review, and comment [Reference (d)]. It is also NHY's expectation that this interim-use criteria document be utilized for Staff/FEMA review and evaluation of the SPMC. Should that review and comment process or the final criteria document identify any need for changes to the SPMC, NHY anticipates that changes, if any, would only constitute a minor revision to the SPMC. Furthermore, NHY's review of the changes identified in Section I.G. of the Supplement indicates that some minor specific changes and enhancements to the SPMC may be in order for further refinement of the SPMC. NHY is continually evaluating and drilling the SPMC and as a result, additional refinements and improvements may develop in this dynamic process. We anticipate that any changes to the SPMC resulting from this process would be minor in scope.

In summary, NHY believes that the review of the SPMC to the interim criteria document would be appropriate and requests that the NRC and FEMA proceed expeditiously. NRC and FEMA comments are necessary so that we can complete the training of well over a thousand emergency response workers prior to our graded exercise as well as incorporating any of these comments into the plans and procedures in advance of the graded exercise.

If you should have any questions regarding the above, please do not hesitate to contact our Bethesda Licensing Office (Mr. R. E. Sweeney) at (301) 636-6100.

Very truly yours,

  
George S. Thomas

cc: Atomic Safety and Licensing Board Service List (Offsite EP)

Mr. Victor Nerses, Project Manager  
Project Directorate I-3  
Division of Reactor Projects  
United States Nuclear Regulatory Commission  
Washington, DC 20555

Mr. William T. Russell  
Regional Administrator  
United States Nuclear Regulatory Commission  
Region I  
631 Park Avenue  
King of Prussia, PA 19406

Mr. Antone C. Cerne  
NRC Senior Resident Inspector  
Seabrook Station  
Seabrook, NH 03874

En  
5



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

DEC 2 1987

MEMORANDUM FOR: Richard W. Krimm  
Assistant Associate Director  
Office of Natural and Technological Hazards  
Federal Emergency Management Agency

FROM: Frank J. Congel, Director  
Division of Radiation Protection  
and Emergency Preparedness  
Office of Nuclear Reactor Regulation

SUBJECT: FEMA SUPPORT FOR NRC LICENSING OF  
SEABROOK NUCLEAR STATION

This memorandum supplements our request of November 27, 1987, in which the NRC asked FEMA to review the Seabrook Plan for Massachusetts Communities (SPMC).

In reviewing and evaluating utility offsite plans and preparedness, FEMA should assume that in an actual radiological emergency, State and local officials that have declined to participate in emergency planning will:

- (1) Exercise their best efforts to protect the health and safety of the public;
- (2) Cooperate with the utility and follow the utility offsite plan; and
- (3) Have the resources sufficient to implement those portions of the utility offsite plan where State and local response is necessary.

The above assumptions were the subject of correspondence between NRC and FEMA on October 21, October 28, and November 9, 1987, and are incorporated in Supplement 1 to 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 (Criteria for Utility Offsite Planning and Preparedness)", November 1987.

As you know, on September 18, 1987, Public Service of New Hampshire (licensee) submitted the SPMC to satisfy the standards established by the Commission in CLI-87-02 and CLI-87-03. Certain information was deleted from the SPMC by the licensee (e.g., names of individuals and companies under letters of agreement and names and telephone numbers of emergency response personnel) to ensure that there would be no unwarranted invasion of privacy. On September 21, 1987, the licensee filed a motion with the Commission to lift the stay of the low power

DEC 2 1987

license for Seabrook, Unit 1. In its November 25, 1987 Memorandum and Order lifting that stay, the Commission determined that, as a condition of low power operation, the licensee must provide to the staff and FEMA any of the deleted information in the SPMC that the staff and FEMA deem necessary for the detailed full power review. Accordingly, please let us know as soon as practicable those portions of the plan that are currently deleted that FEMA requires to complete its detailed review. A copy of the Commission Order is attached.



Frank J. Congel, Director  
Division of Radiation Protection  
and Emergency Preparedness  
Office of Nuclear Reactor Regulation

Enclosure:  
Commission Memorandum and  
Order dtd. 11/25/87

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6



# Federal Emergency Management Agency

Region X

Federal Regional Center

Boothell, Washington 98021 9796

January 15, 1988

MEMORANDUM FOR: Regional Assistance Committee, FEMA Region I  
FEMA REP Task Force  
*Richard W. Donovan*  
FROM: Richard W. Donovan  
RAC Chairman for the Review of the  
Seabrook Plan for Massachusetts Communities

SUBJECT: Review of Seabrook Plan for Massachusetts Communities

On December 30, Mr. Henry Vickers, FEMA Region I's Regional Director, forwarded to you "Information and Guidance Memorandum, RI-TH-87-32." The memorandum indicated that FEMA will review the plans developed by New Hampshire Yankee for Radiological Emergency Preparedness in the Massachusetts portion of the Seabrook EPZ, and that FEMA is requesting your assistance in performing this review as Regional Assistance Committee (RAC) members in Region I. The memorandum also indicated that I have been detailed to FEMA Region I to act as RAC Chairman for the review of the Seabrook Plan for Massachusetts Communities.

For this plan review, we will use "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," Supplement 1, dated November 1987. The following assumptions shall be applied to the review and evaluation of the Seabrook Plan and Preparedness for Massachusetts:

In an actual radiological emergency, State and local officials that have declined to participate in emergency planning will:

- Exercise their best efforts to protect the health and safety of the public; cooperate with the utility and follow the Utility Offsite Plan; and have the resources sufficient to implement those portions of the Utility Offsite Plan where State and local response is necessary.

For situations in which State and/or local governments are participating in this process, the existing NUREG-0654/FEMA-REP-1, Rev. 1 evaluation criteria will apply.

My normal process of conducting a plan review is to prepare a draft evaluation of the plan and preparedness programs, forward it to the RAC for review, and then schedule and conduct a RAC meeting to receive input, comments, advice and recommendations. I plan to have the draft evaluation completed and forwarded to you by February 19, 1988. If any of you have comments that you would like to provide before that time, please provide direct to me no later than February 5.

I look forward to meeting and working with you in the near future. I will talk with each of you on a routine basis to inform you of my progress and to see how your reviews are progressing. If you have any questions or feel the need for additional orientation on the Criteria for Utility Offsite Planning and Preparedness, please let me know (FTS 390-4693 or 206-487-4693).

Copy to:  
Henry G. Vickers, RD, RI

SERVICE LIST

Exh  
7



# Federal Emergency Management Agency

Washington, D.C. 20472

October 16, 1987

MEMORANDUM FOR: Victor J. Stello  
Executive Director for Operations  
Nuclear Regulatory Commission

FROM: *DMH* Dave McLoughlin  
Deputy Associate Director  
State and Local Programs and Support

SUBJECT: Development of Utility Plan Evaluative Criteria

This is to follow up on several issues raised at the meeting yesterday between members of our staffs about the development of criteria suitable for the evaluation of offsite emergency plans developed by utilities.

You requested that we supply you with the names of the Argonne National Laboratory staff needed as additional resources in connection with the project on the utility plan evaluative criteria. In the process of compiling the list of names, we have concluded that four staff are necessary. The names are: Mr. John Ely, Mr. Kenneth Lerner, Ms. Sue Ann Curtis and Mr. William Gasper. In addition, it will be necessary for Argonne to supply four additional staff to backfill and perform the functions normally required by FEMA during the duration of the criteria development project.

I would like to stress the importance of having written instructions prepared by the Nuclear Regulatory Commission, before beginning the project, which state specifically the assumptions upon which the plan reviews would be conducted. It would be impossible to develop the criteria without knowing the conceptual framework within which they are to operate successfully.

Given the above resources and agreement on the assumptions, we are prepared to begin work with NRC staff on October 26, 1987 on the development of criteria suitable for the evaluation of utility plans by FEMA. We would also be prepared to disseminate the document resulting from that project by November 12, 1987, to the participants in the meeting to be held on Friday, November 13, at 9:00 a.m. in the FEMA offices. From our view, the purpose of that meeting would be to consider the criteria document and any potential issues which would need to be addressed by FEMA and NRC management.

I hope that this is helpful. If you have any questions, please feel free to call me at 646-3692.

Exh.  
8



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

October 21, 1987

RECEIVED OCT 26 1987

MEMORANDUM FOR: Richard W. Krimm  
Assistant Associate Director  
Office of Natural and Technological  
Hazards Programs  
Federal Emergency Management Agency

FROM: Frank J. Congel, Director  
Division of Radiation Protection  
and Emergency Preparedness  
Office of Nuclear Reactor Regulation

SUBJECT: DEVELOPMENT OF UTILITY OFFSITE PLAN  
EVALUATION CRITERIA

This responds to the understanding reached at the October 15, 1987 meeting between FEMA and NRC, and reflected in Dave McLoughlin's October 16, 1987 memorandum to Victor Stello. We agreed that the NRC would provide written instructions which state specifically the assumptions upon which utility offsite plan reviews would be conducted by FEMA.

In developing evaluation criteria and in reviewing utility sponsored offsite emergency response plans, FEMA should assume that in an actual emergency, state and local officials will (1) exercise their best efforts to protect the health and safety of the public, (2) cooperate with the utility and follow the utility offsite plan, and (3) apply resources that are within the general capabilities of state and local governments to implement those portions of the utility offsite plan where state or local response is necessary.

As we further agreed, any FEMA findings on the adequacy of utility offsite plans will necessarily include the caveat that FEMA was requested by the NRC to use the above assumptions in evaluating a utility offsite plan.

A handwritten signature in cursive script, reading "Frank J. Congel", is positioned above the typed name and title.

Frank J. Congel, Director  
Division of Radiation Protection  
and Emergency Preparedness  
Office of Nuclear Reactor Regulation

CONTACT: Edward M. Podolak, Jr., NRR  
492-7290



Exh.  
9

General Comments:

1. The assumptions are not well drafted and leave open many critical questions. Does Assumption 1c. on page 2 mean that the state and local governments will be assumed to have material and personnel? Does "sufficient to implement" mean that these resources will be sufficient to implement the utility plan adequately? Is FEMA prepared to assume this for Massachusetts even though FEMA has in fact determined in the past that the Commonwealth's "resources" are not adequate? What are the portions of the utility plan "where state and local response is necessary"? Is this operationally defined on page 6 or only illustrated? What is the actual function of liaisons? Where will these liaisons actually go and how will they do what is described here?

2. The definition of ORO on page 3 is unclear. Does the ORO include organizations other than the utility offsite emergency response organization? If so, many of the evaluation criteria become contradictory. If not, this definition is poorly worded.

3. Generally, aside from the all-important planning assumptions, the changes from NUREG-0654, Rev. 1 appear to be nothing more than the substitution of the words "offsite response organization" for state and local governments. See page 3. However, as noted below, often the result is organizational confusion and the loss of any meaningful criterion or requirement.

Specific Comments:

A.1a: Definition of "offsite response organization" in footnote is contradictory. Is "ORO" to include other non-utility organizations? If so, who speaks for these other organizations?

d: Unclear what being "in charge" of the emergency response means? This is the person designated by the ORO. Is she "in charge" of state & local officials who are assumed to participate in an actual emergency?

e: 24 hour day links maintained by ORO but what is being linked? In Rev. 1, each organization is linked with the others. What is linked here?

A.2a: What does "require state and local authorization" mean? Is it imagined that these listed functions and actions would be performed by non-governmental personnel? Could the state and locals legally authorize such actions? How? Through emergency appointment, deputation or delegation? If performed by governmental personnel then this should state that these functions require "authorization" and "staffing" by state and local governments. What does the sentence mean that immediately follows the list of ten functions and precedes A.2b?

b: What does "legal basis for such authorities" mean?  
What is the element intended by: "including those  
that reserve functions to state and local governments"?

Is the point here that the plan must set forth the legal basis for stating that certain emergency functions must have state and local government authorization? If so, the phrase beginning "including those . . ." is redundant because the functions are already identified as those reserved by law to the state and local governments. Why limit the legal references to those identified? The legal basis will also be the state and federal constitutions and state and federal common law.

A.3: If the definition of offsite response organization set forth as a footnote to A.1a is accurate then these written agreements must be between different parts of the same whole. "Offsite response organization" must be something different from the "other participating voluntary and private organizations, and . . . federal government [ ]" as defined in footnote 1.

A.4: Assuming the "ORO" does not definitionally include any other organizations, then this 24-hour capability is rather limited. Rev. 1 required "each principal organization" to have 24-hour continuous operations.

This included federal and private sector organizations if they were considered "principal." In Supp. 1 only the ORG must be capable of 24-hour operations. But if there are other principal organizations, they should also have to have 24-hour operations capability.

- 3: Supp. 1 ignores Planning Standard B no doubt because it is entitled "Onsite Emergency Organization." However, there are important features of this criterion that make no sense without state and local participation. A key component to the Rev. 1 B planning standard is the provision of an "interface" between onsite activities and offsite activities. For example, B.2 requires a person to be identified who will initiate protective action recommendations to "authorities responsible for implementing offsite emergency measures." B.6 requires a block diagram linking onsite functions to the "state and local government response organization." Finally, B.7 requires specification of personnel for "management level interface with governmental authorities" and for "release of information to news media during an emergency (coordinated with governmental authorities)." None of these connections between onsite planning and offsite response are dealt with in Supp. 1 because it simply states that planning standard B is "not applicable."

- C.1: In general, character of the Federal Radiological Emergency Response Plan ("FRERP") is ignored. In fact, the FRERP was designed to interface with state and local governments. What is the difference, if any, between the "licensee" and the "offsite response organization?" The Interagency Radiological Assistance Plan is ignored. Why?
- C.5: ORO's personnel that are to advise and assist are not identified by function or task. Which portions of the plan require state or local response?
- D: This standard still references state and local response plans.
- D.4: Should the implementing procedures provide for the emergency actions or provide for advising state and local officials on emergency actions?
- E.1: Does this include notification of state and local officials?
- E.2: To the extent that state and local personnel are going to actually perform an emergency role or at least, are assumed to perform such a role, these people should be notified by somebody.

E.5: ORO is to disseminate information to the public, including notification of EBS and broadcast media. Can private organizations do this?

E.6: Whose responsibility should it be to activate this system of notification? Also Supp. 1 references Appendix 3 for details of the "administrative and physical means" of notification. But Appendix 3 requires:

- (1) organizations and individuals who will be responsible for actually notifying the populations,
- (2) provision for use of public media or commercial broadcast,
- (3) EBS on NOAA weather radio are to be put on alert at "Alert" category. Who can do this?
- (4) information is to be provided to public within 5 miles over radio and television within 15 minutes. Appendix 3 expressly references the state and local agencies. Emergency plans are to include evidence of such arrangements including citation to applicable laws.

(5) calls for primary and alternate channels of communications,

(6) alert and notification systems must be integrated with state and local EBS Operational Area Plan. "[A]ctual public notices would only take place upon authorization of governmental authorities." 3-15.

E.7: "[M]essages should address the various conditions such as the delegation of authority by the state and local governments to the ORO to issue prompt instructions." Is such delegation legal?

E.8: What is meant by coordination? When should it occur? In our case, would New Hampshire (a participating state) Massachusetts (a non-participating state) and the ORO and/or licensee do this coordinating.

F.1: A 24-hour hook-up is required but only between the  
F.1a: licensee and ORO. The hook-up to state and local governments can be via 911 plus a capacity to transmit on existing radio frequencies. Does this make sense?

F.3: How is this "entire system" going to be tested?

G.1: But how will the public actually be notified and by whom?

G.4b: Who are these other spokespersons?

I.11: Can federal resources simply be dovetailed with private efforts?

J.7: This criterion has not been changed although it requires a mechanism for licensee to recommend protective actions to state and local authorities. Also, "prompt notification shall be made directly to the offsite authorities responsible for implementing protective measures."

J.9: "establish a capability for implementing protective measures." What does this mean in this context?

J.11: What authority is needed for ingestion pathway measures?

K.3a: Does ORO monitor doses for state personnel as well?

b: How can ORO ensure that state workers' dosimeters are read?

- K.4: Can ORO decide to authorize that state emergency workers get doses in excess of PAGs?
- M.1: Can ORO decide to "relax protective measures"?
- N.1b: "Adequate to verify the capability?" Without state and local personnel how will this be verified?  
"Capabilities to interface with non-participating state and local governments." What does "interface" mean here and what standard will be applied?
- N.6: State and local governments need not participate. How could this ever establish or verify "capability to respond"? How could "all major elements of the plans" ever be tested?
- O.1: Who are "appropriate individuals"? They are not defined here. In fact, Rev. 1 states: "shall provide site specific emergency response training for those offsite emergency organizations who may be called upon to provide assistance."
- O.4: ORO is to train those who will implement. Does this include the state and local people? Is FEMA assuming these people will be trained or not?

ORO shall train:

- (d) police, security and fire fighting personnel
- (g) local support services personnel including Civil  
Defense

0.6: ORO offers training to non-participating state personnel. But is it required? If not, how can a determination of adequacy be made?

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

'88 MAR -7 P2:28

OFFICE OF GENERAL COUNSEL  
DOCKETING & SERVICE  
BRANCH

In the Matter of )  
)  
)

PUBLIC SERVICE COMPANY OF NEW )  
HAMPSHIRE, ET AL. )  
(Seabrook Station, Units 1 and 2) )  
)  
)

Docket No.(s) 50-443/444-OL

CERTIFICATE OF SERVICE

I, Frank W. Ostrander, hereby certify that on March 4, 1988, I made service of the within COMMENTS OF MASSACHUSETTS ATTORNEY GENERAL JAMES M. SHANNON IN OPPOSITION TO NUREG-0654/FEMA-REP-1 REV. 1, SUPP. 1 "CRITERIA FOR UTILITY OFFSITE PLANNING AND PREPAREDNESS", by mailing copies thereof, postage prepaid, by first class mail to:

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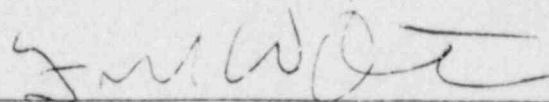
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