

Perkins

A-7



November 27, 1981

SECY-81-669

RULEMAKING ISSUE
(Affirmation)

For: The Commissioners

From: William J. Dircks, Executive Director for Operations

Subject: FINAL AMENDMENTS: (A) TO 10 CFR PART 50, APPENDIX E, DELAYING IMPLEMENTATION DATE FOR PROMPT PUBLIC NOTIFICATION SYSTEMS, (B) TO 10 CFR 50.54(s)(2), CLARIFYING FOUR-MONTH EXTENSION PERIOD

Purpose: To obtain Commission approval for publication of two final amendments in the Federal Register.

Category: This paper covers a major policy matter.

Background: On August 19, 1980, the NRC published a revised emergency planning regulation which became effective on November 3, 1980. The rule required licensees to demonstrate, among other things, by July 1, 1981:

"that administrative and physical means have been established for alerting and providing prompt instructions to the public within the plume exposure pathway EPZ. The design objective shall be to have the capability to essentially complete the initial notification of the public within the plume exposure pathway EPZ within about 15 minutes."

On August 11, 1981, the Commission discussed possible actions because licensees failed to comply with the July 1, 1981 requirement contained in 10 CFR 50.47(b)(5) and 10 CFR 50, Appendix E, Section IV.D.3. The licensees' failure to meet the July 1, 1981 date was attributed to unforeseen difficulties and uncertainties surrounding the design, procurement and installation of the prompt notification systems.

Contact:
Mike Jamgochian, RES
443-5942
an Grimes, IE
-4614

8112180101
EXA

At the August 11, 1981 meeting, the Commission approved publication of a proposed rule change (SECY-81-503) which would provide an extension of the July 1, 1981 date to February 1, 1982. (See 46 FR 46587). That Federal Register notice requested public comment during a 30-day period ending October 21, 1981. This paper provides for Commission consideration of an effective amendment concerning the extension of this date.

On October 30, 1981, the Commission discussed SECY-81-554 which suggests changes to two sections of the Emergency Preparedness regulations, §§ 50.47 and 50.54(s)(2). During this meeting, the Commission directed the staff to make certain editorial changes to the staff's proposed change to § 50.47. These changes were made and transmitted to the Commission for reconsideration on November 6, 1981, in SECY-81-554A. The Commission also, on October 30, directed the staff to combine the remaining proposed change in SECY-81-554 relating to the four-month period for correcting deficiencies in § 50.54(s)(2) with the final rule pertaining to the delaying of the implementation date for prompt public notification systems. This paper also responds to that Commission direction.

Discussion:

To date, comments have been received from four NRC licensees, five individuals or organizations in the nuclear industry, one from the general public, three from environmental organizations, one from a mass transit system director, and one from a State governor. The comments received from the general public and from the environmental organizations are against delaying the implementation date to February 1982. The other commenters generally agree with extending the implementation date along with additional suggestions.

One suggested modification to the proposed rule change, which the staff now supports, is not to eliminate the four-month period for correction of any deficiencies identified during the initial installation of the prompt notification system. The staff now believes that the elimination of this four-month period would be inconsistent with the need to perform a reasonable test of the system and make any needed changes as indicated by the test results. The enclosed effective regulation incorporates this concept.

After due consideration of the public comments, the staff continues to recommend, however, that the completion date for installation of a prompt notification system be extended to February 1, 1982, and any licensee not completing the installation by that date would be subject to enforcement action.

In addition, § 50.54(s)(2) currently requires that,

"For operating power reactors, the licensee, State, and local emergency response plans shall be implemented by April 1, 1981, except as provided in Section IV.D.3 of Appendix E of this part. If after April 1, 1981, the NRC finds that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency and if the deficiencies are not corrected within four months of that finding, the Commission will determine whether the reactor shall be shut down until such deficiencies are remedied or whether other enforcement action is appropriate."

It has come to the staff's attention that because this section of the regulation was written as one paragraph it can be interpreted to mean that the four-month period for the correction of emergency preparedness deficiencies does not apply to "Section IV.D.3 of Appendix E." This is a misinterpretation of the Commission's intent, which was that the four-month period is to apply to any deficiencies identified in the emergency plans, including deficiencies in an installed prompt public notification system that are revealed during testing of the system. The staff therefore recommends that § 50.54(s)(2) be modified to more clearly reflect the Commission's intent.

This change, which would be published as a final rule effective immediately in conjunction with the rule change discussed above, is one part of a rule change that was originally submitted for Commission consideration in SECY-81-554. The remaining rule change that was in SECY-81-554 has been resubmitted for Commission consideration in SECY-81-554A.

Cost Estimate:

The staff does not anticipate that there will be any additional costs to the NRC or to licensees associated with these rule changes.

Recommendation:

That the Commission:

1. Approve: The publication of these final rule changes in the Federal Register.
2. Note:
 - a. That the Federal Register notice (Enclosure 1) states that the § 50.54(s)(2) rule change is interpretative

in nature and is therefore being published as a final rule, without advance notice and opportunity for public comment.

- b. That appropriate Congressional committees will be notified of these rule changes.
- c. That the ACRS is being informed of the rule changes.
- d. That, pursuant to § 51.51(d)(3) of the Commission's regulations, an environmental impact statement, negative declaration, or environmental impact appraisal need not be prepared in connection with the subject amendments because there is no substantive or significant environmental impact.
- e. That this final rule contains a two-part Regulatory Flexibility statement reflecting: (1) that the delaying of the implementation date for the prompt public notification systems will not have a significant economic impact on a substantial number of small entities, pursuant to the Regulatory Flexibility Act of 1980, § 605(b) and (2) that the rule change to § 50.54(s)(2) is not subject to the provisions of the Regulatory Flexibility Act of 1980, because the Commission has determined pursuant to 5 U.S.C. 553 that a notice of proposed rulemaking for § 50.54(s)(2) need not be issued and the rule may be promulgated in final form and become effective on the date of publication in the Federal Register.
- f. That the rule change contains a statement that, pursuant to the Paperwork Reduction Act of 1980, the NRC has made a determination that the rule change does not impose new recordkeeping, information collection, or reporting requirements.
- g. That copies of this notice will be distributed to affected applicants, licensees, and other interested persons by the Office of Administration.
- h. That a public announcement of the rule change will be made.
- i. That changes to the Value/Impact Analysis and TMI Action Plan Review submitted earlier to the Commission (SECY-81-503 and 81-554) have not been necessary.

Sunshine Act: Recommend consideration at an open meeting.

Scheduling: For early consideration.



William J. Dircks
Executive Director for Operations

Enclosure:

1. Federal Register Notice of Final Rulemaking
-

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Monday, December 14, 1981.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT December 7, 1981, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an open meeting during the week of December 21, 1981. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

DISTRIBUTION

Commissioners
Commission Staff Offices
Exec Dir for Operations
Exec Legal Director
ACRS
ASLBP
Secretariat

ENCLOSURE

76
NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Emergency Planning and Preparedness for Production and
Utilization Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Commission is making two changes to its emergency planning regulations. The change to 10 CFR Part 50, Appendix E delays the date by which prompt public notification systems must be operational around all nuclear power plants. The change to § 50.54 clarifies the language of the rule to conform with the Commission's intent at the time of promulgation.

EFFECTIVE DATE: [Insert date of publication in the Federal Register.]

FOR FURTHER INFORMATION: Michael T. Jamgochian, Human Factors Branch, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (telephone 301-443-5942).

SUPPLEMENTARY INFORMATION:

I. The Amendment to 10 CFR Part 50, Appendix E

On August 19, 1980, the NRC published a revised emergency planning regulation which became effective on November 3, 1980. The rule required licensees to demonstrate, among other things, by July 1, 1981:

"that administrative and physical means have been established for alerting and providing prompt instructions to the public within the plume exposure pathway EPZ. The design objective shall be to have the capability to essentially complete the

initial notification of the public within the plume exposure pathway EPZ within about 15 minutes."

On August 11, 1981, the Commission discussed possible actions because licensees failed to comply with the July 1, 1981 requirement contained in 10 CFR 50.47(b)(5) and 10 CFR 50, Appendix E, Section IV.D.3. The licensees' failure to meet the July 1, 1981 date was attributed to unforeseen difficulties and uncertainties surrounding the design, procurement and installation of the prompt notification systems.

At the August 11, 1981 meeting, the Commission approved publication of a proposed rule change which would provide an extension of the July 1, 1981 date to February 1, 1982. (See 46 FR 46587). That Federal Register notice requested public comment during a 30-day period ending October 21, 1981.

To date, comments have been received from four NRC licensees, five individuals or organizations in the nuclear industry, one from the general public, three from environmental organizations, one from a mass transit system director, and one from a State governor. The comments received from the general public and from the environmental organizations were against delaying the implementation date to February 1982. The letters from the other commenters generally agree with extending the implementation date along with additional suggestions.

One suggested modification to the proposed rule change, which has been accepted and included in these final amendments, is not to eliminate the four-month period for correction of any deficiencies identified during the initial installation of the prompt notification system. The Commission now believes that the elimination of this four-month period would be inconsistent with the need to perform a reasonable test of the system and make any needed changes as indicated by the test results. The

enclosed effective regulation incorporates this concept. The installation date, however, remains February 1, 1982, and any licensee not completing the installation by that date would be subject to enforcement action.

After evaluating all public comment letters received, the Commission has decided to publish, as immediately effective, a final rule change to 10 CFR Part 50, Appendix E which will delay the implementation date for the prompt public notification systems from July 1, 1981 to February 1, 1982.

This decision is based on a recognition that emergency plans and preparedness have significantly improved within the last year at and around every nuclear power plant site. This significant improvement has been confirmed by NRC teams who have visited a number of plant sites to evaluate the licensees' compliance with the upgraded emergency planning regulations of August 1980. In addition, the Federal Emergency Management Agency (FEMA) and the NRC have monitored numerous nuclear emergency exercises involving State and local governments and the licensees, and again have witnessed a significant improvement on onsite and offsite emergency preparedness.

The decision to delay the implementation data is also based on the recognition that there exist customary warning systems (police, radio, telephone) which are viewed as sufficiently effective in many postulated accident scenarios. In view of the above, the Commission finds that there exists sufficient reason to believe that appropriate protective measures can and will be taken for the protection of the health and safety of the public in the event of a radiological emergency during the extended time period for compliance.

II. The Amendment to 10 CFR 50.54

Additionally, 10 CFR 50.54(s)(2), currently requires that,

"For operating power reactors, the licensee, State, and local emergency response plans shall be implemented by April 1, 1981, except as provided in Section IV.D.3 of Appendix E of this part. If after April 1, 1981, the NRC finds that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency and if the deficiencies are not corrected within four months of that finding, the Commission will determine whether the reactor shall be shut down until such deficiencies are remedied or whether other enforcement action is appropriate."

It has come to the Commission's attention that because this section of the regulation was written as one paragraph, it can be interpreted to mean that the four-month period for the correction of emergency preparedness deficiencies does not apply to "Section IV.D.3 of Appendix E."

This is a misinterpretation of the Commission's intent, which was that the four-month period is to apply to any deficiencies identified in the emergency plans. The Commission is therefore modifying § 50.54(s)(2) to more clearly reflect that intent. The four-month period provided in § 50.54(s)(2), will not apply to any licensee for the installation and conduct of testing of the public notification system by February 1, 1982. If a licensee is not in compliance with this requirement for installation and testing by February 1, 1982, the Commission will consider taking appropriate enforcement actions promptly at that time. In determining appropriate enforcement action to initiate, the Commission will take into account, among other factors, the demonstrated diligence of the licensee in attempting to fulfill the prompt public notification capability requirement. The Commission will consider whether the licensee has kept the NRC informed of the steps that it has taken, when those steps were taken

and any significant problems encountered, and the updated timetable which the licensee expects will be met in achieving full compliance with the prompt public notification capability requirements. The four-month period will, however, apply to correction of deficiencies identified during the initial installation and testing of the prompt public notification systems as well as those deficiencies discovered thereafter.

Because the amendment to § 50.54(s)(2) is interpretative and of a minor nature, simply resolving an ambiguity in the rules to the Commission's intended meaning at the time of promulgation, the Commission finds good cause to dispense with advance notice and opportunity for public comment thereon as unnecessary. For this reason, this change shall be effective as a final rule upon publication in the Federal Register.

Likewise, the Commission is publishing the final amendments to 10 CFR Part 50, Appendix E (extending the implementation date for the installation of a prompt public notification system) as effective immediately upon publication, pursuant to 5 U.S.C. 553(d)(1), since the rule is expected to relieve the obligation of certain licensees with respect to the present July 1, 1981 deadline for operational public notification systems. In that regard, the Commission notes that the final rule, when effective, will be applied to ongoing licensing proceedings now pending and to issues or contentions therein. Union of Concerned Scientists v. AEC, 499 F. 2d 1069 (D.C. Cir. 1974).

Regulatory Flexibility Act Statement

Pursuant to the Regulatory Flexibility Act of 1980, Pub. L. 96-354, the NRC has determined: (1) that the delaying of the implementation date for the prompt public notification systems will not have a significant economic impact on a substantial number of small entities, pursuant to

the Regulatory Flexibility Act of 1980, § 605(b) and (2) that the rule change to § 50.54 (s)(2) is not subject to the provisions of the Regulatory Flexibility Act of 1980, because the Commission has determined pursuant to 5 U.S.C. 553 that a notice of proposed rulemaking for § 50.54 (s)(2) need not be issued and that the rule may be promulgated in final form and become effective on the date of publication in the Federal Register.

Paperwork Reduction Act Statement

Pursuant to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the NRC has made a determination that this final rule does not impose new recordkeeping, information collection, or reporting requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of title 5 of the United States Code, the following amendments to 10 CFR Part 50 are published as documents subject to codification:

PART 50 - DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

The authority citation for Part 50 reads as follows:

AUTHORITY: Secs. 103, 104, 161, 182, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246 (42 U.S.C. 5841, 5842, 5846), unless otherwise noted. Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 50.78-50.81 also issued under

sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), § 50.41(i) issued under sec. 161i, 68 Stat. 949 (42 U.S.C. 2201(i)); §§ 50.70, 50.71, and 50.78 issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)), and the laws referred to in Appendices.

1. Section IV.D.3 of Appendix E to Part 50 is revised to read as follows:

APPENDIX E - EMERGENCY PLANNING AND PREPAREDNESS
FOR PRODUCTION AND UTILIZATION FACILITIES*

* * * * *

D. Notification Procedures

* * * * *

3. A licensee shall have the capability to notify responsible State and local governmental agencies within 15 minutes after declaring an emergency. The licensee shall demonstrate that the State/local officials have the capability to make a public notification decision promptly on being informed by the licensee of an emergency condition. By February 1, 1982, each nuclear power reactor licensee shall demonstrate that administrative and physical means have been established for alerting and providing prompt instructions to the public within the plume exposure pathway EPZ. The four-month period in 10 CFR 50.54(s)(2) for the correction of emergency

*The regulation has been typed in comparative text showing changes from the proposed rule change published in the Federal Register on September 21, 1981.

plan deficiencies shall not apply to the initial installation of this public notification system that is required by February 1, 1982. The four-month period will apply to correction of deficiencies identified during the initial installation and testing of the prompt public notification systems as well as those deficiencies discovered thereafter. The design objective of the prompt public notification system shall be to have the capability to essentially complete the initial notification of the public within the plume exposure pathway EPZ within about 15 minutes. The use of this notification capability will range from immediate notification of the public (within 15 minutes of the time that State and local officials are notified that a situation exists requiring urgent action) to the more likely events where there is substantial time available for the State and local governmental officials to make a judgment whether or not to activate the public notification system. Where there is a decision to activate the notification system, the State and local officials will determine whether to activate the entire notification system simultaneously or in a graduated or staged manner. The responsibility for activating such a public notification system shall remain with the appropriate governmental authorities.

* * * * *

2. § 50.54(s)(2) is revised to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(2)(i) For operating power reactors, the licensee, State, and local emergency response plans shall be implemented by April 1, 1981, except as provided in Section IV.D.3 of Appendix E to this part.

(2)(ii) If after April 1, 1981, the NRC finds that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency (including findings based on requirements of Appendix E, Section IV.D.3) and if the deficiencies (including deficiencies based on requirements of Appendix E, Section IV.D.3) are not corrected within four months of that finding, the Commission will determine whether the reactor shall be shut down until such deficiencies are remedied or whether other enforcement action is appropriate. In determining whether a shutdown or other enforcement action is appropriate, the Commission shall take into account, among other factors, whether the licensee can demonstrate to the Commission's satisfaction that the deficiencies in the plan are not significant for the plant in question, or that adequate interim compensating actions have been or will be taken promptly, or that there are other compelling reasons for continued operation.

* * * * *

Dated at _____ this _____ day of 1981.

For the Nuclear Regulatory Commission.

Samuel J. Chilk
Secretary of the Commission