

DEC 07 1981

A-8

MEMORANDUM FOR: Samuel J. Chilk
Secretary of the Commission

FROM: T. A. Rehm, Assistant for Operations
Office of the Executive Director for Operations

SUBJECT: SECY-81-669

There is confusion on the application of the 120 day corrective period in SECY 81-669. The staff has worked with the Office of General Counsel to develop the clarification contained in the attached three replacement pages. The clarifying changes are indicated by vertical lines in the left margin.

(Signed) T. A. Rehm

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Assistant for Operations
Office of the Executive Director
for Operations

Enclosure:
As stated

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ENCLOSURE

REPLACEMENT PAGES FOR SECY-81-669

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 testing 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

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 initial test 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 test 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