

[7590-01]

NUCLEAR REGULATORY COMMISSION
10 C.F.R. Parts 2 and 50
Notice and State Consultation

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim final rule.

SUMMARY: Pursuant to Public Law 97-415, NRC is amending its regulations (1) to provide procedures under which normally it would give prior notice of opportunity for a hearing on applications it receives to amend operating licenses for nuclear power reactors and testing facilities (research reactors are not covered) and prior notice and reasonable opportunity for public comment on proposed determinations about whether these amendments involve no significant hazards considerations, (2) to specify criteria for dispensing with such prior notice and reasonable opportunity for public comment in emergency situations, and (3) to furnish procedures for consultation on any such determinations with the State in which the facility involved is located. These procedures will normally provide the public and the States with prior notice of NRC's determinations involving no significant hazards considerations and with an opportunity to comment on its actions.

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EFFECTIVE DATE: The Commission invites comments on this interim final rule by MAY 6 1983. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Written comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received on the amendments as well as on the Regulatory Analysis proposed in connection with the amendments may be examined in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Thomas F. Dorian, Esq., Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492-8690.

SUPPLEMENTARY INFORMATION:

INTRODUCTION

Public Law 97-415, signed on January 4, 1983, among other things, directs NRC to promulgate regulations which establish (a) standards for determining whether an amendment to an operating license involves no significant hazards

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consideration, (b) criteria for providing or, in emergency situations, dispensing with prior notice and public comment on any such determination, and (c) procedures for consulting on such a determination with the State in which the facility involved is located. See Conf. Rep. No. 97-884, 97th Cong., 2d Sess. (1982). The legislation also authorizes NRC to issue and make immediately effective an amendment to a license, upon a determination that the amendment involves no significant hazards consideration (even though NRC has before it a request for a hearing by an interested person) and in advance of the holding and completion of any required hearing. This rulemaking and request for comments responds to the statutory directive that NRC expeditiously promulgate regulations on items (b) and (c) above. NRC is also publishing separately in the FEDERAL REGISTER interim final regulations on item (a) above.

These regulations are issued, as final though in interim form, and comments will be considered on them. They will become effective 30 days after publication in the FEDERAL REGISTER. Accordingly, interested persons who wish to comment are encouraged to do so at the earliest possible time, but not later than 30 days after publication, to permit the fullest consideration of their views.

BACKGROUND

A. Affected Legislation, Regulations and Procedures

When the Atomic Energy Act of 1954 (Act) was adopted in 1954, it contained no provision which required a public hearing on issuance of a

construction permit or operating license for a nuclear power reactor in the absence of a request from an interested person. In 1957, the Act was amended to require that mandatory hearings be held before issuance of both a construction permit and an operating license for power reactors and certain other facilities. Public Law 85-256 (71 Stat. 576) amending section 189a. of the Act.

The 1957 amendments to the Act were interpreted by the Commission as requiring a "mandatory hearing" before issuance of amendments to construction permits and operating licenses. See, e.g., Hearing Before the Subcommittee on Legislation, Joint Committee on Atomic Energy, 87th Cong., 2d. Sess. (April 17, 1962), at 6.) Partially in response to the administrative rigidity and cumbersome procedures which this interpretation forced upon the Commission (see, Joint Committee on Atomic Energy Staff Study, "Improving the AEC Regulatory Process", March 1961, pp. 49-50), section 189a. of the Act was amended in 1962 to eliminate the requirement for a mandatory public hearing except upon the application for a construction permit for a power or testing facility. As stated in the report of the Joint Committee on Atomic Energy which recommended the amendments:

Accordingly, this section will eliminate the requirements for a mandatory hearing, except upon the application for a construction permit for a power or testing facility. Under this plan, the issuance of amendments to such construction permits, and the issuance of operating licenses and amendments to such construction permits, and the issuance of operating licenses and amendments to operating licenses, would be only after a 30-day public notice and an offer of hearing. In the absence of a request for a hearing, issuance of an amendment to a construction permit, or issuance of

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an operating license, or an amendment to an operating license, would be possible without formal proceedings, but on the public record. It will also be possible for the Commission to dispense with the 30-day notice requirement where the application presents no significant hazards consideration. This criterion is presently being applied by the Commission under the terms of AEC Regulations 50.59. House Report No. 1966, 87th Cong., 2d. Sess., p. 8.

Thus, according to the 1962 amendments, a mandatory public hearing would no longer be required before issuance of an amendment to a construction permit or operating license and a thirty-day prior public notice would be required only if the proposed amendment involved a "significant hazards consideration." In sum, section 189a. of the Act, now provides that, upon thirty-days' notice published in the FEDERAL REGISTER, the Commission may issue an operating license, or an amendment to an operating license, or an amendment to a construction permit, for a facility licensed under sections 103 or 104b. of the Act, or for a testing facility licensed under section 104c., without a public hearing if no hearing is requested by any interested person. Section 189a. also permits the Commission to dispense with such thirty-days' notice and FEDERAL REGISTER publication with respect to the issuance of an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration. These provisions have been incorporated into §§ 2.105, 2.106, 50.58(a) and (b) and 50.91 of the Commission's regulations.

The regulations provide for prior notice of a "proposed action" on an application for an amendment when a determination is made that there is

a significant hazards consideration and provide an opportunity for interested members of the public to request a hearing. See §§ 2.105(a)(3) and 50.91. Hence, if a requested license amendment is found to involve a significant hazards consideration, the amendment would not be issued until after any required hearing is completed or after expiration of the notice period. In addition, § 50.58(b) further explains the Commission's hearing and notice procedures, as follows:

The Commission will hold a hearing after at least 30 days notice and publication once in the FEDERAL REGISTER on each application for a construction permit for a production or utilization facility which is of a type described in § 50.21(b) or § 50.22 or which is a testing facility. When a construction permit has been issued for such a facility following the holding of a public hearing and an application is made for an operating license or for an amendment to a construction permit or operating license, the Commission may hold a hearing after at least 30 days notice and publication once in the FEDERAL REGISTER or, in the absence of a request therefor by any person whose interest may be affected, may issue an operating license or an amendment to a construction permit or operating license without a hearing, upon 30 days notice and publication once in the FEDERAL REGISTER of its intent to do so. If the Commission finds that no significant hazards consideration is presented by an application for an amendment to a construction permit or operating license, it may dispense with such notice and publication and may issue the amendment.

The Commission's practice with regard to license amendments involving no significant hazards consideration (unless, as a matter of discretion, prior notice was given) was to issue the amendment and then publish in the FEDERAL REGISTER a "notice of issuance." See § 2.106. In such a case, interested members of the public who wished to object to the amendment and request a hearing could do so, but a request for a hearing did not, by itself, suspend the effectiveness of the amendment. Thus, both the notice and hearing, if one were requested, occurred after the amendment was issued.

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It is important to bear in mind that there is no intrinsic safety significance to the "no significant hazards consideration" standard. Whether or not an action requires prior notice, no license and no amendment may be issued unless the Commission concludes that it provides reasonable assurance that the public health and safety will not be endangered and that the action will not be inimical to the common defense and security or to the health and safety of the public. See, e.g., § 50.57(a). Also, whether or not an amendment entails prior notice, no amendment to any license may be issued unless it conforms to all applicable Commission safety standards. Thus, the "no significant hazards consideration" standard has been a procedural standard only, governing whether public notice of a proposed action must be provided, before the action is taken by the Commission. In short, the "no significant hazards consideration" standard has been a notice standard and has had no substantive safety significance, other than that attributable to the process of prior notice to the public and reasonable opportunity for a hearing.

B. The Sholly Decision and the New Legislation

The Commission's practice of not providing an opportunity for a prior hearing on a license amendment not involving significant hazards considerations was held to be improper in Sholly v. NRC, 651 F.2d 780 (1980), rehearing denied, 651 F.2d 792 (1980), cert. granted 101 S.Ct. 3004 (1981) (Sholly). In that case the U.S. Court of Appeals for the District of Columbia Circuit ruled that, under section 189a. of the Act,

NRC must hold a prior hearing before an amendment to an operating license for a nuclear power plant can become effective, if there has been a request for hearing (or an expression of interest in the subject matter of the proposed amendment which is sufficient to constitute a request for a hearing). A prior hearing, said the Court, is required even when NRC has made a finding that a proposed amendment involves no significant hazards consideration and has determined to dispense with prior notice in the FEDERAL REGISTER. At the request of the Commission and the Department of Justice, the Supreme Court agreed to review the Court of Appeals' interpretation of section 189a. of the Act. The Supreme Court has remanded the case to the Court of Appeals with instructions to vacate it if it is moot and, if it is not, to reconsider it in light of the new legislation.

The Court of Appeals' decision did not involve and has no effect upon the Commission's authority to order immediately effective amendments, without prior notice or hearing, when the public health, safety, or interest so requires. See, Administrative Procedure Act, § 9(b), 5 U.S.C. § 558(c), section 161 of the Atomic Energy Act, and 10 C.F.R. §§ 2.202(f) and 2.204. Similarly, the Court did not alter existing law with regard to the Commission's pleading requirements, which are designed to enable the Commission to determine whether a person requesting a hearing is, in fact, an "interested person" within the meaning of section 189a. -- that is, whether the person has demonstrated standing and identified one or more issues to be litigated. See, BPI v. Atomic Energy Commission, 502 F.2d 424, 428 (D.C. Cir. 1974), where the Court stated that, "Under its procedural regulations it is not

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unreasonable for the Commission to require that the prospective intervenor first specify the basis for his request for a hearing."

However, the Commission believed that legislation was needed to change the result reached by the Court in Sholly because of the implications of the requirement that the Commission grant a requested hearing before it could issue a license amendment involving no significant hazards consideration. The Commission believes that, since most requested license amendments involving no significant hazards consideration are routine in nature, hearings on such amendments could result in disruption or delay in the operations of nuclear power plants and could impose regulatory burdens upon it and the nuclear industry that are not related to significant safety matters. Subsequently, on March 11, 1981, the Commission submitted proposed legislation to Congress (introduced as S.912) that would expressly authorize it to issue a license amendment before holding a hearing requested by an interested person, when it has made a determination that no significant hazards consideration is involved in the amendment.

After the House and Senate conferees considered two similar bills, H.R.2330 and S.1207, they agreed on a unified version (see Conf. Rep. No. 97-884, 97th Cong. 2d. Sess. (1982)) and passed Public Law 97-415. Specifically, section 12(a) of that law amends section 189a. of the Act by adding the following with respect to license amendments involving no significant hazards considerations:

(2)(A) The Commission may issue and make immediately effective any amendment to an operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this Act.

(B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.

(C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.

Section 12(b) of that law specifies that:

(b) The authority of the Nuclear Regulatory Commission, under the provisions of the amendment made by subsection (a), to issue and to make immediately effective any amendment to an operating license shall take effect upon the promulgation by the Commission of the regulations required in such provisions.

Thus, as noted above, the legislation authorizes NRC to issue and make immediately effective an amendment to an operating license upon a determination that the amendment involves no significant hazards consideration, even though NRC has before it a request for a hearing from

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an interested person. At the same time, however, the legislative history makes it clear that Congress expects NRC to exercise its authority only in the case of amendments not involving significant safety questions.

The Conference Report states:

The conference agreement maintains the requirement of the current section 189a. of the Atomic Energy Act that a hearing on the license amendment be held upon the request of any person whose interest may be affected. The agreement simply authorizes the Commission, in those cases where the amendment involved poses no significant hazards consideration, to issue the license amendment and allow it to take effect before this hearing is held or completed. The conferees intend that the Commission will use this authority carefully, applying it only to those license amendments which pose no significant hazards consideration. Id., at 37.

In this regard, the Senate stressed:

its strong desire to preserve for the public a meaningful right to participate in decisions regarding the commercial use of nuclear power. Thus, the provision does not dispense with the requirement for a hearing, and the NRC, if requested [by an interested person], must conduct a hearing after the license amendment takes effect. See S. Rep. No. 97-113, 97th Cong., 1st Sess., at 14 (1981).

The public notice provision was explained by the Conference Report as follows:

The conferees note that the purpose of requiring prior notice and an opportunity for public comment before a license amendment may take effect, as provided in subsection (2)(C)(ii) for all but emergency situations, is to allow at least a minimum level of citizen input into the threshold question of whether the proposed license amendment involves significant health or safety issues. While this subsection of the conference agreement preserves for the Commission substantial flexibility to tailor the notice and comment procedures to the exigency of the need for the license amendment, the conferees expect the content, placement and timing of the notice to be reasonably calculated to allow residents of the area surrounding the facility an adequate opportunity to formulate and submit reasoned comments.

The requirement in subsection 2(C)(ii) that the Commission promulgate criteria for providing or dispensing with prior notice and public comment on a proposed determination that a license amendment involves no significant hazards consideration reflects the conferees' intent that, wherever practicable, the Commission should publish prior notice of, and provide for prior public comment on, such a proposed determination.

In the context of subsection (2)(C)(ii), the conferees understand the term "emergency situations" to encompass only those rare cases in which immediate action is necessary to prevent the shutdown or derating of an operating commercial reactor . . . The Commission's regulations should insure that the "Emergency situations" exception under section 12 of the conference agreement will not apply if the licensee has failed to apply for the license amendment in a timely fashion. In other words, the licensee should not be able to take advantage of the emergency itself. To prevent abuses of this provision, the conferees expect the Commission to independently assess the licensee's reasons for failure to file an application sufficiently in advance of the threatened closure or derating of the facility. Conf. Rep. No. 97-884, 97th Cong., 2d Sess., at 38 (1982).

C. Notice for Public Comment and for Opportunity for a Hearing.

The Commission has decided to adopt the notice procedures and criteria contemplated by the legislation with respect to determinations about no significant hazards consideration. In addition it has decided to combine the notices for public comment on no significant hazards considerations with the notices for opportunity for a hearing, thereby, normally providing both prior notice of opportunity for a hearing and prior notice for public comment of requests it receives to amend operating licenses of facilities described in § 50.21(b) or § 50.22 or of testing facilities.

With respect to opportunity for a hearing, the Commission would amend § 2.105 to specify that it could normally issue in the FEDERAL REGISTER at least monthly a list of "notices of proposed actions" on requests for

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amendments to operating licenses. These monthly notices would provide an opportunity to request a hearing within thirty days. The Commission would also retain the option of issuing individual notices, as it sees fit. If the Commission does not receive any request for a hearing on an amendment within the notice period, it would take the proposed action when it has completed its review and made the necessary findings. If it receives such a request, it would act under a new § 50.91, which describes the procedures and criteria the Commission would use to act on applications for amendments to operating licenses involving no significant hazards considerations. (The interim final rule on "Standards for Determining Whether License Amendments Involve No Significant Hazards Considerations," published separately in the FEDERAL REGISTER, redesignated the present § 50.91 as § 50.92.)

To implement the main theme of the legislation, under new § 50.91 the Commission would combine a notice of opportunity for a hearing with a notice for public comment on any proposed determination on no significant hazards consideration. Additionally, new § 50.91 would permit the Commission to make an amendment immediately effective in advance of the holding and completion of any required hearing where it has determined that no significant hazards consideration is involved. Thus, § 50.91 would build upon amended § 2.105, providing details for the system of FEDERAL REGISTER notices. For instance, exceptions would be made for emergency situations, where no prior notices (for opportunity for a hearing and for public comment) might be issued, assuming no significant hazards considerations are involved. In sum, this system would add a "notice for public comment" under § 50.91 to the present system of "notice

of proposed action" under § 2.105 and "notice of issuance" under § 2.106. Under this new system, the Commission would require an applicant requesting an amendment to its operating license (1) to provide its appraisal on the issue of significant hazards, using the standards in § 50.92 and the examples discussed in the separate FEDERAL REGISTER notice, and (2), if it involves the emergency or exigency provisions, to address the features on which the Commission must make its findings. (Both points will be discussed later.)

When the Commission receives the amendment request, as described below, it would first decide whether there is an emergency or an exigency. If there is no emergency, it would then make a preliminary decision, called a "proposed determination," about whether the amendment involves no significant hazards consideration -- normally, this would be done before completion of the safety analysis (also called safety evaluation). In this determination, it might accept the applicant's appraisal in whole or in part or it might reject the applicant's appraisal but, nonetheless, reach the same conclusion.

At this stage, if the Commission decides that no significant hazards consideration is involved, it could issue an individual FEDERAL REGISTER notice or list this amendment in its monthly publication in the FEDERAL REGISTER. This monthly publication would not only list amendment requests received for which the Commission is publishing notice under § 2.105, it would also provide a reasonable opportunity for public comment by listing this and all amendment requests received since the last such monthly notice, and, like an individual notice, (a) providing a brief description of the amendment

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and of the facility involved, (b) noting the proposed no significant hazards consideration determination, (c) soliciting public comment on the determination, and (d) providing for a 30-day comment period.

While it is awaiting public comment, the Commission would proceed with the safety analysis. In this context, the Commission wishes to note that, though the substance of the public comments could be litigated in a hearing, when one is held, neither it nor its Boards will entertain hearing requests on its actions with respect to these comments. It believes that this is in keeping with the legislation which states that public comment cannot delay the effective date of an amendment.

After the public comment period, the Commission would review the comments, consider the safety analysis, and reach its final decision on the amendment request. If it decides that no significant hazards consideration is involved, it would publish an individual "notice of issuance" under § 2.106 or publish the notice of issuance in its system of monthly FEDERAL REGISTER notices, and thus close the public record. Note that the Commission would not make and publish a final determination on no significant hazards consideration because such a determination is needed only if a hearing request is received and the Commission decides to make the amendment immediately effective and to provide a hearing after issuance rather than before.

If it receives a hearing request during the comment period and the Commission has decided that no significant hazards consideration is involved, it would prepare a "final determination" on that issue, make the requisite safety and public health findings, and proceed to issue the amendment. The hearing request would be treated the same way as in previous Commission practice, that is, by providing any requisite hearing after the amendment has been issued. As explained before, the legislation permits the Commission to make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person (even one that meets the provisions for intervention in § 2.714), in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved. The Commission wishes to state in this regard that any question about its staff's determinations on the issue of significant versus no significant hazards consideration that may be raised in any hearing on the amendment will not stay the effective date of the amendment.

The Commission believes that the procedure just described would be its usual way of handling license amendments, because most of these do not involve emergency or exigent situations and do not entail a determination that significant hazards consideration is involved. These three situations and other unusual ones could arise though.

Returning to the initial receipt of an application, if the Commission receives an amendment request and then determines that a significant hazards

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consideration is involved, it would handle this request in the same way it does now, by issuing an individual notice of proposed action and providing an opportunity for a hearing under § 2.105. The only change in its present procedure would be that it could notify the public of the final disposition of the amendment by noting its issuance or denial in the monthly FEDERAL REGISTER notice instead of in an individual notice.

Another possibility might be that the Commission receives an amendment request and finds an emergency situation, where failure to act in a timely way would result in derating or shutdown of a nuclear power plant. In this case, also discussed later in connection with State consultation, it may proceed to issue the license amendment, if it determines, among other things, that no significant hazards consideration is involved. In this circumstance, the Commission might not necessarily be able to provide for prior notice for opportunity for a hearing or for prior notice for public comment and might therefore use its present procedure, publishing an individual notice of issuance under § 2.106 (which provides an opportunity for a hearing after the amendment is issued.) Additionally, the Commission's monthly FEDERAL REGISTER notice system would note the Commission's action on the amendment request and, thereby, provide an opportunity for public comment. In connection with emergency requests, the Commission expects its licensees to apply for license amendments in a timely fashion. It will decline to dispense with notice and comment on the no significant hazards consideration determination, if it determines that the applicant has failed to make a timely application for the amendment in order to create the emergency and to take advantage of the

emergency provision. Whenever a threatened closure or derating is involved, the Commission expects the applicant to explain to it why this emergency situation has occurred and why the applicant could not avoid it; the Commission will assess the applicant's reasons for failure to file an application sufficiently in advance of that event.

Still another possibility might be that the Commission receives an amendment request and finds an exigency, that is, a situation other than an emergency where swift action is necessary. The legislation, quoted above, states that the Commission should establish criteria which "take into account the exigency of the need for the amendment." The Conference Report, quoted above, points out that "the conference agreement preserves for the Commission substantial flexibility to tailor the notice and comment procedures to the exigency of the need for the license amendment" and that "the conferees expect the content, placement and timing of the notice to be reasonably calculated to allow residents of the area surrounding the facility an adequate opportunity to formulate and submit reasoned comments."

The Commission believes that extraordinary situations may arise, short of an emergency, where a licensee and the Commission must act quickly and where time does not permit the Commission to publish a FEDERAL REGISTER notice soliciting public comment or to provide 30 days ordinarily allowed for public comment. For instance, such a circumstance may arise where a licensee, while shutdown for a short time, wishes to add some component clearly more reliable than one presently installed or wishes to use a different method of testing some system

and that method is clearly better than one provided for in its Technical Specifications. In either case, the licensee may have to request an amendment, and, if the Commission determines, among other things, that no significant hazards consideration is involved, it may wish to grant the request before the licensee starts the plant up and the opportunity to improve the plant is lost.

In circumstances such as the two just described, the Commission may use media other than the FEDERAL REGISTER, for example, a local newspaper published near the licensee's facility, widely read by the residents in the area surrounding the facility, to inform the public of the licensee's amendment request. In these instances, the Commission will provide the public a reasonable opportunity to comment on the proposed no significant hazards determination. To ensure that the comments are received on time, the Commission may also set up in such a situation a toll-free hotline, allowing the public to telephone their comments to NRC on the amendment request. It should be noted that this method of prior notice for public comment will be in addition to the routine notice of the amendment in the monthly FEDERAL REGISTER compilation or to any individual notice of hearing that may be published; it will not affect the time available to exercise one's opportunity to request a hearing, though it may provide that opportunity only after the amendment has been issued, when the Commission has determined that no significant hazards consideration is involved.

The Commission will use these procedures sparingly and wants to make sure that its licensees will not take advantage of these procedures. Therefore, it will use criteria, somewhat similar to the ones it will use with respect to emergency situations, to decide whether it will shorten the comment period and change the type of notice normally provided. Consequently, in connection with requests indicating an exigency, the Commission expects its licensees to apply for license amendments in a timely fashion. It will not change its normal notice and public comment practices where it determines that the licensee has failed to use its best efforts to make a timely application for the amendment in order to create the exigency and to take advantage of the exigency provision. Whenever a licensee wants to use this provision, it will have to explain to the Commission the reason for the exigency and why the licensee cannot avoid it; the Commission will assess the licensee's reasons for failure to file an application sufficiently in advance of its proposed action or for its inability to take the action at some later time.

Another different circumstance may also present itself to the Commission. For instance, it could receive an amendment request with respect to which it finds that it is in the public interest to offer an opportunity for a prior hearing. In this case, it would use its present individual notice procedure and notify the public about the final disposition of the amendment in a notice of issuance or denial in its monthly FEDERAL REGISTER notice, instead of in an individual notice.

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It should also be noted that these procedures only apply to license applications. The Commission may, under existing §§ 2.202(f) and 2.204, make a determination that the public health, safety, or interest requires it to order an amendment without prior notice for public comment or opportunity for a hearing. In this case, the Commission would follow its present procedure and publish an individual notice of issuance in the FEDERAL REGISTER and provide for an opportunity for a hearing on the order.

This new system would change only the Commission's noticing practices; it would not alter the Commission's hearing practices. The Commission has attempted to provide noticing procedures that are administratively simple, involve the least cost, do not entail undue delay, and allow a reasonable opportunity for public comment; nevertheless, they are quite burdensome and involve significant resource impacts and timing delays for the Commission and for licensees requesting amendments. Licensees would be able to reduce these delays, under the proposed procedures, by providing to the Commission their appraisals on the issue of significant hazards. There might also be other ways to make the noticing procedures simpler and to assure that the opportunity for public comment is not curtailed. The Commission is therefore particularly interested in comments addressing the workability of its proposed noticing procedures.

Finally, with respect to amendment requests received before the interim final rule takes effect, the Commission proposes to keep its present procedures and

not provide notice for public comment on amendments requested on which the Commission has not acted before the effective date of the interim final rule.

D. State Consultation

As noted above, Public Law 97-415 requires the Commission to consult with the State in which the facility involved is located and to promulgate regulations which prescribe procedures for such consultation on a determination that an amendment to an operating license involves no significant hazards consideration. The Conference Report, cited earlier, stated that the conferees expect that the procedures for State consultation would include the following elements:

- (1) The State would be notified of a licensee's request for an amendment;
- (2) The State would be advised of the NRC's evaluation of the amendment request;
- (3) The NRC's proposed determination on whether the license amendment involves no significant hazards consideration would be discussed with the State and the NRC's reasons for making that determination would be explained to the State;
- (4) The NRC would listen to and consider any comments provided by the State official designated to consult with the NRC; and
- (5) The NRC would make a good faith attempt to consult with the State prior to issuing the license amendment.

At the same time, however, the procedures for State consultation would not:

- (1) Give the State a right to veto the proposed NRC determination;
- (2) Give the State a right to a hearing on the NRC determination before the amendment becomes effective;
- (3) Give the State the right to insist upon a postponement of the NRC determination or issuance of the amendment; or
- (4) Alter present provisions of law that reserve to the NRC exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

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In requiring the NRC to exercise good faith in consulting with a State in determining whether a license amendment involves no significant hazards consideration, the conferees recognize that a very limited number of truly exceptional cases may arise when the NRC, despite its good faith efforts, cannot contact a responsible State official for purposes of prior consultation. Inability to consult with a responsible State official following good faith attempts should not prevent the NRC from making effective a license amendment involving no significant hazards consideration, if the NRC deems it necessary to avoid the shut-down or derating of a power plant. Id., at 39.

The Commission believes that the law and its legislative history are quite specific. Accordingly, it proposes to adopt the elements described in the Conference Report quoted above in those cases where it makes a proposed determination on no significant hazards consideration. Normally, the State consultation procedures would work as follows. To make the State consultation process simpler and speedier, the Commission would require an applicant requesting an amendment to send a copy of its appraisal on the question of no significant hazards to the State in which the facility involved is located. (The NRC is compiling a list of State officials who have been designated to consult with it on amendment requests involving no significant hazards considerations; it intends to make this list available to all its licensees with facilities covered by § 50.21(b) or § 50.22 or with testing facilities.)

The Commission would send its FEDERAL REGISTER notice, or other notice in case of exigent circumstances, containing its proposed determination to the State official designated to consult with it together with a request to that person to contact the Commission if there is any disagreement or concern about its proposed determination. If it does not hear from the State in a

timely manner, it will consider that the State has no interest in its determination -- in this regard, the Commission intends to make available to the designated State officials a list of its Project Managers and other personnel whom it has designated to consult with these officials -- but, nevertheless, before it issues the amendment, it will telephone the appropriate State official for the purpose of consultation.

In an emergency situation, the Commission would do its best to consult with the State, before it makes a final determination about no significant hazards consideration, by simply telephoning the appropriate State official before it issues an amendment.

Finally, the Commission wishes to note two points in connection with the legislative history. First, though the Commission intends to give careful consideration to the comments provided to it by the affected State on the question of no significant hazards consideration, the State comments are advisory to the Commission; the Commission remains responsible for making the final administrative decision on the question. Second, State consultation does not alter present provisions of law that reserve to the Commission exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

Paperwork Reduction Act Statement

This rule contains a new reporting requirement which the Office of Management and Budget approved under OMB No. 3150-0011 for the Commission's use through April 30, 1985.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants and testing facilities. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. Since these companies are dominant in their service areas, this rule does not fall within the purview of the Act.

Regulatory Analysis

The Commission has prepared a Regulatory Analysis on these amendments, assessing the costs and benefits and resource impacts. It may be examined at the address indicated above.

General notice of proposed rulemaking is not required for this interim final rule because the amendments by their nature concern rules of agency procedure and practice. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that the following amendments to 10 C.F.R. Parts 2 and 50 are published as a document subject to codification.

List of Subjects in 10 C.F.R. Parts 2 and 50.

Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

Part 50

Antitrust, Classified information, Fire prevention, Inter-governmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting requirements.

PART 2 -- RULES OF PRACTICE FOR
DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

AUTHORITY: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955 as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239) Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Sections 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended: (42 U.S.C. 2039). Appendix A also issued under sec. 6, Pub. L. 91-580, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.105, paragraphs (a)(4) through (a)(8) are redesignated as paragraphs (a)(5) through (a)(9), a new paragraph (a)(4) is added, and redesignated paragraph (a)(6) is revised, as follows:
§ 2.105 Notice of proposed action.

(a) * * *

(4) An amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility, as follows:

(i) If the Commission determines under § 50.58 that the amendment involves no significant hazards consideration, though it will provide notice of opportunity for a hearing pursuant to this section, it may make the amendment immediately effective and grant a hearing thereafter; or

(ii) If the Commission determines under § 50.58 and § 50.91 that an emergency or exigent situation exists and that the amendment involves no significant hazards considerations, it will provide notice of opportunity for a hearing pursuant to § 2.106 (if a hearing is requested, it will be held after issuance of the amendment);

* * * * *

(5) An amendment to a license specified in paragraph (a)(5) of this section, or an amendment to a construction authorization granted in proceedings on an application for such a license, when such amendment would authorize actions which may significantly affect the health and safety of the public; or

* * * * *

PART 50 -- DOMESTIC LICENSING OF
PRODUCTION AND UTILIZATION FACILITIES

3. The authority citation for Part 50 is revised to read as follows:

AUTHORITY: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.58, 50.91 and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 also issued under sec. 186, 68 U.S.C. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. A new §50.91 is added to Part 50 to read as follows:
§50.91 Notice for public comment; State consultation.

The Commission will use the following procedures on an application received after MAY 6 1983 requesting an amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility:

(a) Notice for public comment.

(1) At the time a licensee requests an amendment, it must provide to the Commission its analysis, using the standards in § 50.92, about the issue of no significant hazards consideration.

(2) The Commission may publish in the FEDERAL REGISTER under § 2.105 either an individual notice of proposed action as to which it makes a proposed determination that no significant hazards consideration is involved, or, at least once every 30 days, a monthly notice of proposed actions which identifies each amendment issued and each amendment proposed to be issued since the last such monthly notice. For each amendment proposed to be issued, either notice will (i) contain the staff's proposed determination, under the standards in § 50.92, (ii) provide a brief description of the amendment and of the facility involved, (iii) solicit public comments on the proposed determination, and (iv) provide for a 30-day comment period. Normally, the amendment will not be granted until after this comment period expires.

(3) The Commission may inform the public about the final disposition of an amendment request where it has made a proposed determination on no significant hazards consideration either by issuing an individual notice of issuance under § 2.106 or by publishing such a notice in its monthly system of FEDERAL REGISTER notices. In either event, it will not make and

publish a final determination on no significant hazards consideration, unless it receives a request for a hearing on that amendment request.

(4) Where the Commission makes a final determination that no significant hazards consideration is involved and that the amendment should be issued, the amendment will be effective upon issuance, even if adverse public comments have been received and even if an interested person meeting the provisions for intervention called for in § 2.714 has filed a request for a hearing. The Commission need hold any required hearing only after it issues an amendment, unless it determines that a significant hazards consideration is involved.

(5) Where the Commission finds that an emergency situation exists, in that failure to act in a timely way would result in derating or shutdown of a nuclear power plant, it may issue a license amendment involving no significant hazards consideration without prior notice and opportunity for a hearing or for public comment. In such a circumstance, the Commission will not publish a notice of proposed determination on no significant hazards consideration, but will publish a notice of issuance under § 2.106, providing for opportunity for a hearing and for public comment after issuance. The Commission expects its licensees to apply for license amendments in a timely fashion. It will decline to dispense with notice and comment on the determination of no significant hazards consideration, if it determines that the licensee has failed to make a timely application for the amendment in order to create the emergency and to take advantage of the emergency provision. Whenever a threatened closure or derating is involved, a licensee requesting an amendment must explain why this emergency situation

occurred and why it could not avoid this situation, and the Commission will assess the licensee's reasons for failure to file an application sufficiently in advance of that event.

(6) Where the Commission finds that exigent circumstances exist, in that a licensee and the Commission must act quickly and that time does not permit the Commission to publish a FEDERAL REGISTER notice allowing 30 days for prior public comment, it will:

(i) Use local media to inform the public in the area surrounding a licensee's facility of the licensee's amendment request and of its proposed determination as described in paragraph (a)(2) of this section;

(ii) Provide for a reasonable opportunity for the public to comment, using its best efforts to make available to the public whatever means of communication it can for the public to respond quickly;

(iii) Publish a notice of issuance under § 2.106, providing an opportunity for a hearing and for public comment after issuance, if it determines that the amendment involves no significant hazards consideration.

(iv) Require an explanation from the licensee about the reason for the exigency and why the licensee cannot avoid it, and use its normal public notice and comment procedures in paragraph (a)(2) of this section where it determines that the licensee has failed to use its best efforts to make a timely application for the amendment in order to create the exigency and to take advantage of this procedure.

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(b) State consultation.

(1) At the time a licensee requests an amendment, it must notify the State in which its facility is located of its request by providing to that State a copy of its application and its analysis about no significant hazards consideration and indicate on the application that it has done so. (The Commission will make available to the licensee the name of the appropriate State official designated to receive such amendments.)

(2) The Commission will advise the State of its proposed determination about no significant hazards consideration normally by sending it a copy of the FEDERAL REGISTER notice.

(3) The Commission will make available to the State official designated to consult with it about its proposed determination the names of the Project Manager or other NRC personnel it designated to consult with the State. The Commission will consider any comments of that State official. If it does not hear from the State in a timely manner, it will consider that the State has no interest in its determination; nonetheless, before it issues the amendment it will telephone that official for the purpose of consultation.

(4) The Commission will make a good faith attempt to consult with the State before it issues a license amendment involving no significant hazards consideration. If, however, it does not have time to use its normal consultation procedures because of an emergency situation, it will attempt to telephone the appropriate State official. Inability to consult with a responsible State official following good faith attempts will not prevent the Commission from making effective a license amendment involving no significant hazards consideration, if the Commission deems it necessary to avoid a shutdown or derating.

(5) After the Commission issues the requested amendment, it will send a copy of its final determination to the State.

(c) Caveats about State consultation.

The State consultation procedures in paragraph (b) of this section do not give the State a right:

(1) To veto the Commission's proposed determination;

(2) To a hearing on the determination before the amendment becomes effective; or

(3) To insist upon a postponement of the determination or upon issuance of the amendment;

(4) Nor do these procedures alter present provisions of law that reserve to the Commission exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

Dated at Washington, D.C. this 4th day of April, 1983.

For the Nuclear Regulatory Commission,



Samuel J. Chilk
Secretary for the Commission