Attachment 2
DLOP 228

[7590-01]

NUCLEAR REGULATORY COMMISSION

10 C.F.R. Part 50

Standards for Determining Whether License Amendments

Involve No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim final rule.

SUMMARY: Pursuant to Public Law 97-415, NRC is amending its regulations to specify standards for determining whether requested amendments to operating licenses for certain nuclear power reactors and testing facilities involve no significant hazards considerations. These standards will help NRC in its evaluations of these requests. Research reactors are not covered. However, the Commission is reviewing the extent to which and the way such standards should be applied to research reactors.

EFFECTIVE DATE: MAY 6 1983. The Commission specifically requests 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.

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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 the documents discussed in this notice and of the comments received on the proposed rule and interim final rules 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

Pursuant to Public Law 97-415, NRC must promulgate, within 90 days of enactment, regulations which establish (a) standards for determining whether an amendment to an operating license involves no significant hazards considerations, (b) criteria for providing or, in emergency situations, for dispensing with prior notice and reasonable opportunity for public comment on any such determination, and (c) procedures for consultation on any such determination with the State in which the facility involved is located.

Proposed regulations to specify standards for determining whether amendments to operating licenses or construction permits for facilities licensed under §§ 50.21(b) or 50.22 (including testing facilities) involve no significant

hazards considerations (item (a) above) were published for comment in the FEDERAL REGISTER by the Commission on March 28, 1980 (45 FR 20491). Since the Commission rarely issues amendments to construction permits and has never issued a construction permit amendment involving a significant hazards consideration, it has decided not apply these standards to amendments to construction permits and to handle these case-by-case. This is in keeping with the legislation which applies only to operating license amendments. Additionally, these standards will not now be applied to research reactors. The Commission is currently reviewing whether and how it should apply these or similar standards to research reactors. In sum, the interim final rule will amend Part 50 of the Commission's regulations to establish standards for determining whether an amendment to an operating license involves no significant hazards consideration.

The rule takes account not only of the new legislation but also the public comments received on the proposed rule. For the sake of clarity, affected prior legislation as well as the Commission's regulations and practice are discussed as background information.

Simultaneously with the promulgation of these standards in § 50.92, the Commission is publishing an interim final rule which contains criteria for providing or, in emergency situations, for dispensing with prior notice and reasonable opportunity for and public comment on a determination about whether an amendment to an operating license involves a significant hazards consideration (item (b) above). This rule also specifies procedures for consultation on any such a determination with the State in which the facility involved is located (item (c) above). The rule appears separately in the FEDERAL REGISTER.

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 § 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, at 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 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. H. Rep. No. 1966, 87th Cong., 2d. Sess., at 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.

Thus, it is very important to note that a determination that a proposed license amendment does or does not present a "significant hazards consideration" has involved the hearing and attendant notice requirements. Consequently, under its present rules the Commission has generally coupled its determination about whether it should provide a hearing before issuing an amendment with its determination about whether it should issue a prior notice, and the central factor in both determinations has been the determination about "no significant hazards consideration." It has been charged that in practice this has meant that the staff has sometimes coupled the decision about the merits of an amendment to the decision about when it should notice the amendment, i.e., whether it should give prior notice or post notice. Additionally, there has been some concern that the Act and the regulations have not defined the term "significant hazards consideration" and that they have not established criteria for determining when a proposed amendment involves a "significant hazards consideration." Section 50.59 does set forth criteria for determining when a proposed change, test or experiment involves an "unreviewed safety question," but it is clear that not every such question involves a "significant hazards consideration." In any event, 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, have occurred after the amendment was issued.

It is very 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 its decision 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 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, prior hearings on such amendments could result in unwarranted 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 consideration:

> (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.
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> (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.
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> (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 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. S. Rep. No. 97-113, 97th Cong., 1st Sess. at 14 (1981).

It should be also noted, in light of the previous discussion about the coupling of the decision on the merits of an amendment with the decision about when to notice the amendment, that Section 12 of Public Law 97-415, by providing for prior public notice and comment, in effect uncouples the determination about prior versus post notice from the determination about whether to issue an amendment.

In sum, the Commission is promulgating as an interim final rule the proposed standards in § 50.92 for determining whether an amendment to an operating license involves no significant hazards consideration, and it

is publishing separately an interim final rule to establish (a) procedures for noticing operating license amendment requests for an opportunity for a hearing, (b) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any proposed determination on no significant hazards consideration, and (c) procedures for consulting with the requisite State on any such determination.

INTERIM FINAL RULE ON STANDARDS FOR DETERMINING WHETHER AN AMENDMENT TO AN OPERATING LICENSE INVOLVES NO SIGNIFICANT HAZARDS CONSIDERATIONS AND EXAMPLES OF AMENDMENTS THAT ARE CONSIDERED LIKELY OR NOT LIKELY TO INVOLVE SIGNIFICANT HAZARDS CONSIDERATIONS

A. Petition and Proposed Rule

The Commission's interim final rule on standards for determining whether an amendment involves no significant hazards consideration completes its actions on the notice of proposed rulemaking (discussed above), which was issued in response to a petition for rulemaking (PRM 50-17) submitted by letter to the Secretary of the Commission on May 7, 1976, Mr. Robert Lowenstein. For the reasons discussed below, the petition is denied. However, the Commission is promulgating standards, as intended by the petitioner, though not the standards petitioned for. (PRM-50-17 was published for comment in the FEDERAL REGISTER on June 14, 1976 (41 FR 24006)). The staff's recommendations on this petition are in SECY-79-660 (December 13, 1979). The notice of proposed rulemaking was published in the FEDERAL REGISTER on March 28, 1980 (45 FR 20491). The staff's recommendations on the interim final rule are in SECY-81-366, 81-366A, 83-16, 83-16A and 83-16B. (These documents are available for examination in the Commission's Public Document Room at 1717 H Street, N.W. Washington, D.C.)

The petitioner requested that 10 C.F.R. Part 50 of the Commission's regulations be amended with respect to the procedures for issuance of amendments to operating licenses for production and utilization facilities. The petitioner's proposed amendments to the regulations would have required that the staff take into consideration (in determining whether a proposed amendment to an operating license involves no significant hazards consideration) whether operation of the plant under the proposed license amendment would (1) substantially increase the consequences of a major credible reactor accident or (2) decrease the margins of safety substantially below those previously evaluated for the plant and below those approved for existing licenses. Further, the petitioner proposed that, if the staff reaches a negative conclusion about both of these standards, the proposed amendment must be considered not to involve a significant hazards consideration.

In issuing the proposed rule, the Commission sought to improve the licensing process by specifying in the regulations standards on the meaning of no significant hazards consideration. These standards would have applied to amendments to operating licenses, as requested by the petition for rulemaking, and also to construction permits, to whatever extent considered appropriate. As mentioned before, the Commission now believes that these standards should not be applied to amendments to construction permits, not only because construction permits do not normally involve a significant hazards consideration but also because such amendments are very rare; the proposed rule has been modified accordingly. Additionally, the Commission is reviewing the extent to which and the way standards should be applied to research reactors. The Commission will handle

case-by-case any amendments requested for construction permits or for research reactors with respect to the issue of significant hazards considerations.

In the statement of considerations which accompanied the proposed rule, the Commission explained that it did not agree with the petitioner's proposed standards because of the limitation to "major credible reactor accidents" and the failure to include accidents of a type different from those previously evaluated.

During the past several years the Commission's staff has been guided, in reaching its determinations with respect to no significant hazards consideration, by standards very similar to those now described in this interim final rule as well as by examples of amendments likely to involve, and not likely to involve, significant hazards considerations. These have proven useful to the staff, and the Commission employed them in developing the proposed rule. The notice of proposed rulemaking contained standards proposed by the Commission to be incorporated into Part 50, and the statement of considerations contained examples of amendments to an operating license that are considered likely and not likely to involve a significant hazards consideration. The examples were samples of precedents with which the staff was familiar; they were representative of certain kinds of circumstances; however, they did not cover the entire range of possibilities; nor did they cover every facet of a particular situation. Therefore, they had to be used together with standards in determining whether or not a proposed amendment involved significant hazards considerations.

The three standards proposed in the notice of proposed rulemaking were whether the license amendment would: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any evaluated previously, or (3) involve a significant reduction in a margin of safety.

Before responding to the specific comments on the proposed rule, it should be noted again that it was structured so that the three standards would have been used to decide not only whether the Commission would publish prior notice of an amendment request (as opposed to notice after the amendment was issued) but also to decide whether to grant an opportunity for hearing before issuance of the amendment (as opposed to granting the opportunity after issuance). As explained before, the standards were not meant to be used to make the ultimate decision about whether to issue an amendment -- that final decision is a public health and safety judgment on the merits, not to be confused with the decisions on notice and reasonable opportunity for a hearing.

As a result of the legislation, under the final rule the three standards would no longer be used to make a determination about whether or not to issue prior notice of an amendment request. As fully described in the separate FEDERAL REGISTER notice mentioned before, the Commission has formulated separate notice and State consultation procedures that will provide in all (except emergency and some exigent) situations prior notice of amendment requests. The standards and the examples will usually be limited to a proposed determination and, when a hearing request is received, to a final determination about whether or not significant hazards

considerations are involved in connection with an amendment and, therefore, whether or not to offer an opportunity for a hearing before an amendment is issued. The decision about whether or not to issue an amendment is meant to remain one that, as a separate matter, is based on public health and safety.

B. Comments on the Proposed Rule

1. General

Nine persons submitted comments on the petition for rulemaking and nine persons submitted comments on the proposed amendments. The comments on the petition are in SECY-79-660. The comments on the proposed rule are in SECY file PR-2, 50 (45 FR 20491). A summary of the comments and initially-proposed responses to the comments are in SECY-81-366, available for examination at the Commission's Public Document Room. In light of the legislation, the Commission has decided to make its approach more precise (as described below) and has, therefore, revised its response to the comments. The new response is found in SECY-83-16A and 83-16B.

One of the commenters stated that all three standards are unclear and useless in that they imply a level of detailed review of amendment applications far beyond what the staff normally performs. It is the Commission's considered judgment that the standards have been and will continue to be useful in making the necessary reviews. Moreover, the Commission believes that the standards when used together with the examples will enable it to make the requisite decisions. In this regard, it should be noted that Congress was more than aware of the Commission's standards and proposed their expeditious promulgation. For example, Senate Report No. 97-113, cited above, stated:

> ... the Committee notes that the Commission has already issued for public comment rules including standards for determining whether an amendment involves no significant hazards consideration. The Committee believes that the Commission should be able to build upon this past effort, and it expects the Commission to act expeditiously in promulgating the required standards within the time specified in section 301 [i.e., within 90 days after enactment]. Id. at 15.

Similarly, the House noted:

> The committee amendment provides the Commission with the authority to issue and make immediately effective amendments to licenses prior to the conduct or completion of any hearing required by section 189(a) when it determines that the amendment involves no significant hazards consideration. However,the authority of the Commission to do so is discretionary, and does not negate the requirement imposed by the Sholly decision that such a hearing, upon request, be subsequently held. Moreover, the Committee's action is in light of the fact that the Commission has already issued for public comment rules including standards for determining whether an amendment involves no significant hazards considerations. The Commission also has a long line of case-by-case precedents under which it has established criteria for such determinations.... H. Rep. No. 97-22 (Part 2), 97th Cong., 1st Sess., at 26 (1981) (Emphasis added).

A number of commenters recommended, in regard to the second criterion in the proposed rule, that a threshold level for accident consequences (for example, the limits in 10 C.F.R. Part 100) be established to eliminate insignificant types of accidents from being given prior notice. This comment was not accepted. Setting a threshold level for accident consequences could eliminate a group of amendments with respect to accidents which have not been previously evaluated or which, if previously evaluated, may turn out after further evaluation to have more severe consequences than previously evaluated.

It is possible, for example, that there may be a class of license amendments sought by a licensee which, while designed to improve or

increase safety may, on balance, involve a significant hazards consideration because they result in operation of a reactor with a reduced safety margin due to other factors or problems (i.e., the net effect is a reduction in safety of some significance). Such amendments typically are also proposed by a licensee as an interim or final resolution of some significant safety issue that was not raised or resolved before issuance of the operating license -- and, based on an evaluation of the new safety issue, they may result in a reduction of a safety margin believed to have been present when the license was issued. In this instance, the presence of the new safety issue in the review of the proposed amendment, at least arguably, could prevent a finding of no significant hazards consideration, even though the issue would ultimately be satisfactorily resolved by the issuance of the amendment. Accordingly, the Commission added to the list of examples considered likely to involve a significant hazards consideration a new example (vii).

When the legislation described before was being considered, the Senate Committee on Environment and Public Works commented upon the Commission's proposed rule before it reported S. 1207. It stated:

> The Committee recognizes that reasonable persons may differ on whether a license amendment involves a significant hazards consideration. Therefore, the Committee expects the Commission to develop and promulgate standards that, to the maximum extent practicable, draw a clear distinction between license amendments that involve a significant hazards consideration and those that involve no significant hazards consideration. The Committtee anticipates, for example, that consistent with prior practice, the Commission's standards would not permit a "no significant hazards consideration" determination for license amendments to permit reracking of spent fuel pools. Id., at 15.

The Commission agrees with the Committee "that reasonable persons may differ

and it has tried "to develop and promulgate standards that, to the maximum extent practicable, draw a clear distinction between license amendments that involve a significant hazards consideration and those that involve no significant hazards consideration." The Commission believes that the standards coupled with the examples help draw as clear a distinction as practicable. It has decided not to include the examples in the text of the rule in addition to the original standards, but, rather, to keep them as guidelines under the standards for the use of the Office of Nuclear Reactor Regulation.

The Commission wishes licensees to note that when they consider license amendments outside the examples, the Commission may need additional time for its determination on no significant hazards considerations; thus, they should factor this information into their schedules for developing and implementing such changes to facility design and operation.

The interim final rule thus goes a long way toward meeting the intent of the legislation. In this regard, the Conference Report stated:

> The conferees also expect the Commission, in promulgating the regulations required by the new subsection (2)(C)(i) of section 189a. of the Atomic Energy Act, to establish standards that to the extent practicable draw a clear distinction between license amendments that involve a significant hazards consideration and those amendments that involve no such consideration. These standards should not require the NRC staff to prejudge the merits of the issues raised by a proposed license amendment. Rather, they should only require the staff to identify those issues and determine whether they involve significant health, safety or environmental considerations. These standards should be capable of being applied with ease and certainty, and should ensure that the NRC staff does not resolve

doubtful or borderline cases with a finding of no significant hazards consideration. Conf. Rep. No. 97-884, 97th Cong., 2d Sess., at 37 (1982).

It should be noted that the Commission has attempted to draft standards that are as useful and as clear as possible, and it has tried to formulate examples that will help in the application of the standards. These final standards are the product of a long deliberative process. As will be recalled, standards were submitted by a petition for rulemaking in 1976 for the Commission's consideration. The standards and examples are as clear and certain as the Commission can make them -- and, to repeat the Conference Report, "should ensure that the NRC staff does not resolve doubtful or borderline cases with a finding of no significant hazards consideration." The Commission welcomes suggestions from the public to make them clearer and more precise, recognizing, in the Senate Committee's words, "that reasonable persons may differ on whether a license amendment involves a significant hazards consideration."

With respect to the Conference Committee's statement, quoted above, that the "standards should not require the NRC staff to prejudge the merits of the issues raised by a proposed license amendment," as will be recalled, it has been the Commission's general practice to couple the determination about prior versus post notice with the determination about provision of a prior hearing versus a hearing after issuance of the amendment; thus, occasionally, the issue of prior versus post notice was seen by some as including a judgment on the merits of issuance of an amendment. Consequently,

one commenter suggested that application of the criteria with respect to prior notice in many instances will necessarily require the resolution of substantial factual questions which largely overlap the issues which bear on the merits of the license amendment. The implication of the comment was that the Commission at the prior notice stage could lock itself into a decision on the merits. Conversely, the commenter stated that the staff, in using the no significant hazards consideration standards, was reluctant to give prior notice of amendments because its determination about the notice might be viewed as constituting a negative connotation on the merits.

In any event, the legislation has made these comments moot by requiring separation of the criteria used for providing or dispensing with public notice and comment on no significant hazards consideration determinations from the standards used to make a determination about no significant hazards consideration. Under the legislation, the Commission's criteria for public notice and comment would not be the same as its standards on the determination about no significant hazards consideration. In fact, the Commission will normally provide prior notice (for public comment and for an opportunity for a hearing) for each operating license amendment request. (The Commission's criteria on public notice and comment are discussed in the separate FEDERAL REGISTER notice noted before.) Additionally, the Commission believes that use of these standards and examples will help it reach sound decisions about the issues of significant versus no significant hazards considerations and that their use would not prejudge the merits of a decision.

It holds this belief because the standards and the examples are merely screening devices for a decision about whether to hold a hearing before as opposed to after an amendment is issued and cannot be said to prejudge the Commission's final decision to issue or deny the amendment request. As explained above, that decision is a separate one, based on separate public health and safety findings.

2. Reracking of Spent Fuel Pools

The Commission has been providing prior notice and opportunity for prior hearing on requests for amendments involving reracking of spent fuel pools. The Commission is not prepared to say that a reracking of a spent fuel storge pool will necessarily involve a significiant hazards consideration. Nevertheless, as shown by the legislative history of Public Law 97-415, section 12(a), the Congress was aware of the Commission's practice and statements were made by members of both Houses, before passage of that law, that these members thought the practice would be continued. The report on the Senate side has been quoted above; the discussion in the House is found at 127 Cong. Record at H 8156, Nov. 5, 1981.

The Commission is not including reracking in the list of examples that will be considered likely to involve a significant hazard consideration, because a significant hazards consideration finding is a technical matter which has been assigned to the Commission. However, in view of the expressions of Congressional understanding, the Commission feels that the matter deserves further study. Accordingly, the staff has been

directed to prepare by August 1, 1983, a report (1) which reviews NRC experience to date with respect to spent fuel pool expansion reviews, and (2) which provides a technical judgment on the basis which a spent fuel pool expansion amendment may or may not pose a significant hazards consideration. Upon receipt and review of this report, the Commission will revisit this part of the rule.

During the interim, the Commission will make a finding on the question of no significant hazards consideration for each reracking application, on a case-by-case basis, giving full consideration to the technical circumstances of the case, using the standards in § 50.92 of the rule. It is not the intent of the Commission to make a no significant hazards consideration finding for reracking based on unproven technology. However, where reracking technology has been well developed and demonstrated and where the Commission determines on a technical basis that reracking involves no significant hazards, the Commission should not be precluded from making such a finding. If the Commission determines that a particular reracking involves significant hazards considerations, it will provide an opportunity for a prior hearing, as explained in the separate FEDERAL REGISTER notice.

Additionally, it should be noted that under section 134 of the Nuclear Waste Policy Act of 1982, an interested party may request a "hybrid" hearing in connection with reracking, and may participate in such a hearing, if one is held. The Commission will publish in the near future a FEDERAL REGISTER notice describing this type of hearing with respect to expansions of spent fuel storage capacity and other matters concerning spent fuel.

3. Amendments Involving Irreversible Consequences

The Conference Report stated:

> The conferees intend that in determining whether a proposed license amendment involves no significant hazards consideration, the Commission should be especially sensitive to the issue posed by license amendments that have irreversible consequences (such as those permitting an increase in the amount of effluents or radiation emitted from a facility or allowing a facility to operate for a period of time without full safety protections). In those cases, issuing the order in advance of a hearing would, as a practical matter, foreclose the public's right to have its views considered. In addition, the licensing board would often be unable to order any substantial relief as a result of an after-the-fact hearing. Accordingly, the conferees intend the Commission be sensitive to those license amendments which involve such irreversible consequences. (Emphasis added.) Id., at 37-38.

This statement was explained in a colloquy between Senators Simpson and Domenici, as follows:

> Mr. DOMENICI. In the statement of managers, I direct attention to a paragraph in section 12, the so-called Sholly provision, wherein it is stated that in applying the authority which that provision grants the NRC should be especially sensitive to the issue posed by license amendments that have irreversible consequences." Is that paragraph in general, or specifically, the words "irreversible consequences" intended to impose restrictions on the Commission's use of that authority beyond the provisions of the statutory language? Can the Senator clarify that, please?
>
> Mr. SIMPSON. I shall. It is not the intention of the managers that the paragraph in general, nor the words "irreversible consequences," provide any restriction on the Commission's use of that authority beyond the statutory provision in section 189a. Under that provision, the only determination which the Commission must make is that its action does not involve a significant hazard. In that context, "irreversibility" is only one of the many considerations which we would expect the Commission to consider. It is the determination of hazard which is important, not whether the action is irreversible. Clearly, there are many irreversible actions which would not pose a hazard. Thus where the Commission determines that no significant hazard is involved, no further consideration need be given to the irreversibility of that action.
>
> Mr. DOMENICI. I thank the Senator for the clarification. That is consistent with my readings of the language.... 134 Cong. Rec. (Part II) at S. 13056 (daily ed. Oct. 1, 1982).

The statement was further explained in a colloquy between Senators Mitchell and Hart, as follows:

> Mr. MITCHELL. The portion of the statement of managers discussing section 12 of the report, the so-called Sholly provision, stresses that in determining whether a proposed amendment to a facility operating license involves no significant hazards consideration, the Commisison "should be especially sensitive . . . to license amendments that have irreversible consequences." Is my understanding correct that the statement means the Commission should take special care in evaluating, for possible hazardous considerations, amendments that involve irreversible consequences?
>
> Mr. HART. The Senator's understanding is correct. As you know, this provision seeks to overrule the holding of the U.S. Court of Appeals for the District of Columbia in Sholly against Nuclear Regulatory Commission. That case involved the venting of radioactive krypton gas from the damaged Three Mile Island Unit 2 reactor -- an irreversible action.
>
> As in this case, once the Commission has approved a license amendment, and it has gone into effect, it could prove impossible to correct any oversights of fact or errors of judgment. Therefore, the Commission has an obligation, when assessing the health or safety implications of an amendment having irreversible consequences, to insure that only those amendments that clearly raise no significant hazards issues will take effect prior to a public hearing. Id. (Part III), at S. 13292.

In light of the Conference Report and colloquies quoted above, the Commission wishes to note that it will make sure "that only those amendments that clearly raise no significant hazards issues will take effect prior to a public hearing." It will do this by providing in § 50.92 of the rule that it will review proposed amendments with a view as to whether they involve irreversible consequences. In this regard, example (iii) makes clear that an amendment which allows a plant to operate at full power during which one or more safety systems are not operable would be treated in the same way as other examples considered likely to involve a significant hazards

consideration in that it is likely to meet the criteria in § 50.92 of the rule.

Finally, it is once again important to note that the examples do not cover all possible examples and may not be representative of all possible concerns. As new information is developed, the Commission will refine these examples and add new examples, in keeping with the standards in § 50.92 of the interim final rule -- and, if necessary, it will tighten the standards themselves.

The Commission has left the proposed rule intact to the extent that the rule states standards with respect to the meaning of "no significant hazards consideration." The standards in the interim final rule are substantially identical to those in the proposed rule, though the attendant language in new § 50.92 as well as in § 50.58 has been revised to make the determination easier to use and understand. To supplement the standards that are being incorporated into the Commission's regulations, the guidance embodied in the examples will be referenced in the procedures of the Office of Nuclear Reactor Regulation, a copy of which will be placed in the Commission's Public Document Room.

EXAMPLES OF AMENDMENTS THAT ARE CONSIDERED LIKELY TO INVOLVE SIGNIFICANT HAZARDS CONSIDERATIONS ARE LISTED BELOW

Unless the specific circumstances of a license amendment request, when measured against the standards in § 50.92, lead to a contrary conclusion, then, pursuant to the procedures in § 50.91, a proposed

amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility will likely be found to involve significant hazards considerations, if operation of the facility in accordance with the proposed amendment involves one or more of the following:

(i) A significant relaxation of the criteria used to establish safety limits.

(ii) A significant relaxation of the bases for limiting safety system settings or limiting conditions for operation.

(iii) A significant relaxation in limiting conditions for operation not accompanied by compensatory changes, conditions, or actions that maintain a commensurate level of safety (such as allowing a plant to operate at full power during a period in which one or more safety systems are not operable).

(iv) Renewal of an operating license.

(v) For a nuclear power plant, an increase in authorized maximum core power level.

(vi) A change to technical specifications or other NRC approval involving a significant unreviewed safety question.

(vii) A change in plant operation designed to improve safety but which, due to other factors, in fact allows plant operation with safety margins significantly reduced from those believed to have been present when the license was issued.

EXAMPLES OF AMENDMENTS THAT ARE CONSIDERED NOT LIKELY TO INVOLVE SIGNIFICANT HAZARDS CONSIDERATIONS ARE LISTED BELOW

Unless the specific circumstances of a license amendment request, when measured against the standards in § 50.92, lead to a contrary conclusion then, pursuant to the procedures in § 50.91, a proposed amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility will likely be found to involve no significant hazards considerations, if operation of the facility in accordance with the proposed amendment involves only one or more of the following:

(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

(iv) A relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a prior review and that it is justified in a satisfactory way that the criteria have been met.

(v) Upon satisfactory completion of construction in connection with an operating facility, a relief granted from an operating restriction that was imposed because the construction was not yet completed satisfactorily. This is intended to involve only restrictions where it is justified that construction has been completed satisfactorily.

(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

(vii) A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

(viii) A change to a license to reflect a minor adjustment in ownership shares among co-owners already shown in the license.

Paperwork Reduction Act Statement

This final rule contains no new or amended requirements for record keeping, reporting, plans or procedures, applications or any other type of information collection.

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 C.F.R. 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.

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 Title 10, Chapter I, Code of Federal Regulations, 10 C.F.R.

List of Subjects in 10 C.F.R. Part 50.

Part 50

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

PART 50 -- DOMESTIC LICENSING OF
PRODUCTION AND UTILIZATION FACILITIES

1. 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 and 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)).

2. In § 50.58, paragraph (b) is revised to read as follows:

§50.58 Hearings and report of the Advisory Committee on Reactor Safeguards.

* * * * *

(b) 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 of this part, 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, in an emergency situation, as defined in § 50.91, that no significant hazards consideration is presented by an application for an amendment to an operating license, it may dispense with public notice and and comment and may issue the amendment. If the Commission finds that exigent circumstances exist, as described in § 50.91, it may reduce the period provided for public notice and comment. Both in an emergency situation and in the case of exigent circumstances, the Commission will provide 30 days notice of opportunity for a hearing, though this notice may be published after issuance of the amendment if the Commission determines that no significant hazards considerations are involved. The Commission will use the standards in § 50.92 to determine whether a significant hazards consideration is presented by an amendment to an operating license for a facility of the type described in § 50.21(b) or § 50.22, or which is a testing facility, and may make the amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

3. Section 50.91 is redesignated as § 50.92 and revised to read as follows:

§ 50.92 Issuance of amendment.

(a) In determining whether an amendment to a license or construction permit will be issued to the applicant, the Commission will be guided by the

considerations which govern the issuance of initial licenses or construction permits to the extent applicable and appropriate. If the application involves the material alteration of a licensed facility, a construction permit will be issued prior to the issuance of the amendment to the license. If the amendment involves a significant hazards consideration, the Commission will give notice of its proposed action pursuant to § 2.105 of this chapter before acting thereon. The notice will be issued as soon as practicable after the application has been docketed.

(b) The Commission will be particularly sensitive to a license amendment request that involves irreversible consequences (such as one that, for example, permits a significant increase in the amount of effluents or radiation emitted by a nuclear power plant).

(c) The Commission may make a final determination, pursuant to the procedures in § 50.91, that a proposed amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility involves no significant hazards considerations, if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The views of Chairman Palladino and Commissioners Ahearne, Gilinsky and Asselstine follow.

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

For the Nuclear Regulatory Commission,

Samuel J. Chilk
Secretary for the Commission

CHAIRMAN PALLADINO'S ADDITIONAL VIEWS

In my opinion the Commission's decision on reracking represents its best technical judgment at this time on the generic no-significant-hazards question. That is, the Commission cannot say that reracking, as a general matter, would or would not involve a significant hazards consideration. The technical considerations of reracking proposals can vary significantly from one to another.

It was this latter fact, as well as the statements made in the Congress on reracking, that caused me to vote for the staff to study the technical basis for judgments about the hazards considerations presented by particular reracking applications.

I also believe that we may have cleared up one of the Congressional concerns about reracking by stating that it is not our intent to make a no-significant-hazards-consideration finding for reracking based on unproven technology.

ADDITIONAL COMMENTS OF COMMISSIONER AHEARNE

There have been several complaints that the criteria for determining when an amendment involves significant hazards considerations are unclear or difficult to apply. For example, in the current notice the Commission notes that a commenter on the proposed rule stated the standards are "unclear and useless in that they imply a level of detailed review of amendment applications far beyond what the staff normally performs."[1] However, these criticisms must be considered in context.

In May 1976 a petition for rulemaking was filed which requested that criteria be specified for determining when an amendment involved no significant hazards considerations.[2] The petition was published for comment in 1976.[3] The Commission received a few comments, primarily supporting or opposing criteria which had been proposed in the petition. The discussion focused on underlying philosophical/legal issues rather than specific alternative criteria.

The rulemaking then lay dormant for several years. In late 1979 the Commission addressed the matter and agreed to issue a proposed rule for

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[1]This refers to: "Comments by the Natural Resources Defense Council and the Union of Concerned Scientists on Proposed amendments to 10 CFR Parts 2 and 50: No Significant Hazards Consideration" at 8 (May 23, 1980) (comment 3, PR-2,50 (45 FR 20491)).

[2]The petition was filed May 7, 1976 by Mr. Robert Lowenstein on behalf of Boston Edison Company, Florida Power and Light Company, and Iowa Power Company.

[3]41 Fed. Reg. 24006 (June 14, 1976).

public comment. The proposed rule was published in March 1980.[4] As the Commission explained in that notice:

> "During the past several years, the Staff has been guided in reaching its findings with respect to 'no significant hazards consideration' by staff criteria and examples of amendments likely to involve, and not likely to involve, significant hazards considerations. These criteria and examples have been promulgated within the Staff and have proven useful to the Staff. The Commission believes it would be useful to consider incorporating these criteria into the Commission's regulations for use in determining whether a proposed amendment to an operating license or to a construction permit of any production or utilization facility involves no significant hazards consideration."[5]

With respect to the criticism that the criteria are unclear, we have not received much assistance in developing clearer criteria despite having obtained two rounds of comment over the last seven years. For example, in the comment on the proposed rule mentioned above, NRDC and UCS simply argued: "The NRC should promulgate a rule holding that prior notice and opportunity for hearing should be provided for construction permit and operating licenses amendments in all cases except those involving no significant previously-unreviewed safety issue."[6] In addition, the debate has often

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[4] 45 Fed. Reg. 20491 (March 28, 1980).

[5] Id. at 20492.

[6] Id. at 11. 10 CFR 50.59 deems actions to be an "unreviewed safety question":

> "(i) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased; or (ii) if a possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created; or (iii) if the margin of safety as defined in the basis for any technical specification is reduced."

NRDC/UCS did not propose an alternate definition to be used with their proposal. It is interesting to note the substantial similarity to the significant hazards consideration test.

become confused by differing assumptions and philosophies that are not usually clearly identified. For example, the NRDC/UCS implication of a detailed level of review arises largely because of an implicit assumption that the criteria are intended to require a merits type review. In fact, what the staff has always done, and what I believe we had in mind, was to make a preliminary judgment.

Basically, we have done the best we can. I would be willing to address any specific alternatives. However, after dealing with this for a number of years, I believe we must move ahead with what we have.

ADDITIONAL VIEWS OF COMMISSIONER ASSELSTINE

I strongly disagree with the Commission majority's decision to permit the use of the "Sholly amendment" authority contained in section 12 of Public Law 97-415, the NRC Authorization Act for fiscal years 1982 and 1983, for license amendments for the reracking of a spent fuel pool.

The Commission majority's interim final rule would change the Commission's longstanding and consistent policy of requiring that any requested hearing on a license amendment for the reracking of a spent fuel pool be completed prior to granting the license amendment. Although the Commission has considered and approved a large number of spent fuel pool reracking amendments in the past, it has never used the no significant hazards consideration provisions in section 189 a. of the Atomic Energy Act of 1954 as a basis for approving the amendment before the completion of a requested hearing.

It is clear to me from the legislative history of section 12 of Public Law 97-415 that the Congress did not intend that the authority granted by section 12 should be used to approve reracking amendments prior to the completion of any requested hearing. The Sholly amendment was first included in the NRC authorization bill for fiscal years 1982 and 1983 by the Senate Committee on Environment and Public Works. The

4/4/83

COMMISSIONER GILINSKY'S SEPARATE VIEWS ON THE INTERIM FINAL RULE REGARDING STANDARDS FOR DETERMINING WHETHER LICENSE AMENDMENTS INVOLVE NO SIGNIFICANT HAZARDS CONSIDERATIONS (AMENDMENTS TO 10 CFR PART 50)

Standing by themselves, the standards which are set forth in the rule are so general that they offer no real guidance to the NRC staff. In a prior version of the rule, the Commission included, in the rule itself, some very useful examples of which amendments do and do not involve a significant hazards consideration. In the final version, these examples have been downgraded to the preamble of the rule where they will be of little or no legal consequence and where, as a practical matter, they will be inaccessible to anyone but the NRC historian. This diminishes the value of the rule so much that I can no longer approve it.

The earlier version of the rule placed amendments authorizing substantial spent fuel pool expansions in the significant hazards consideration category. The Commission should have retained this categorization which is consistent with the terms of the rule. Moreover, the Commission should not have ignored the strong public and Congressional views which have been expressed on this point, most recently by Senators Simpson, Hart, and Mitchell. I am in agreement with Commissioner Asselstine's analysis of the legislative record underlying this provision.

modification to the plant and because of the significance attached to reracking by State and local officials and by the public.

Finally, I believe that there are strong public policy reasons for continuing the Commission's past practice of completing hearings on reracking amendment proposals before approving the amendment. These public policy reasons include the strong interest and concern on the part of State and local governments and the public regarding reracking proposals and the extent to which proceeding with reracking in advance of the hearing may prejudice the later consideration of other alternatives to the proposed reracking plan.

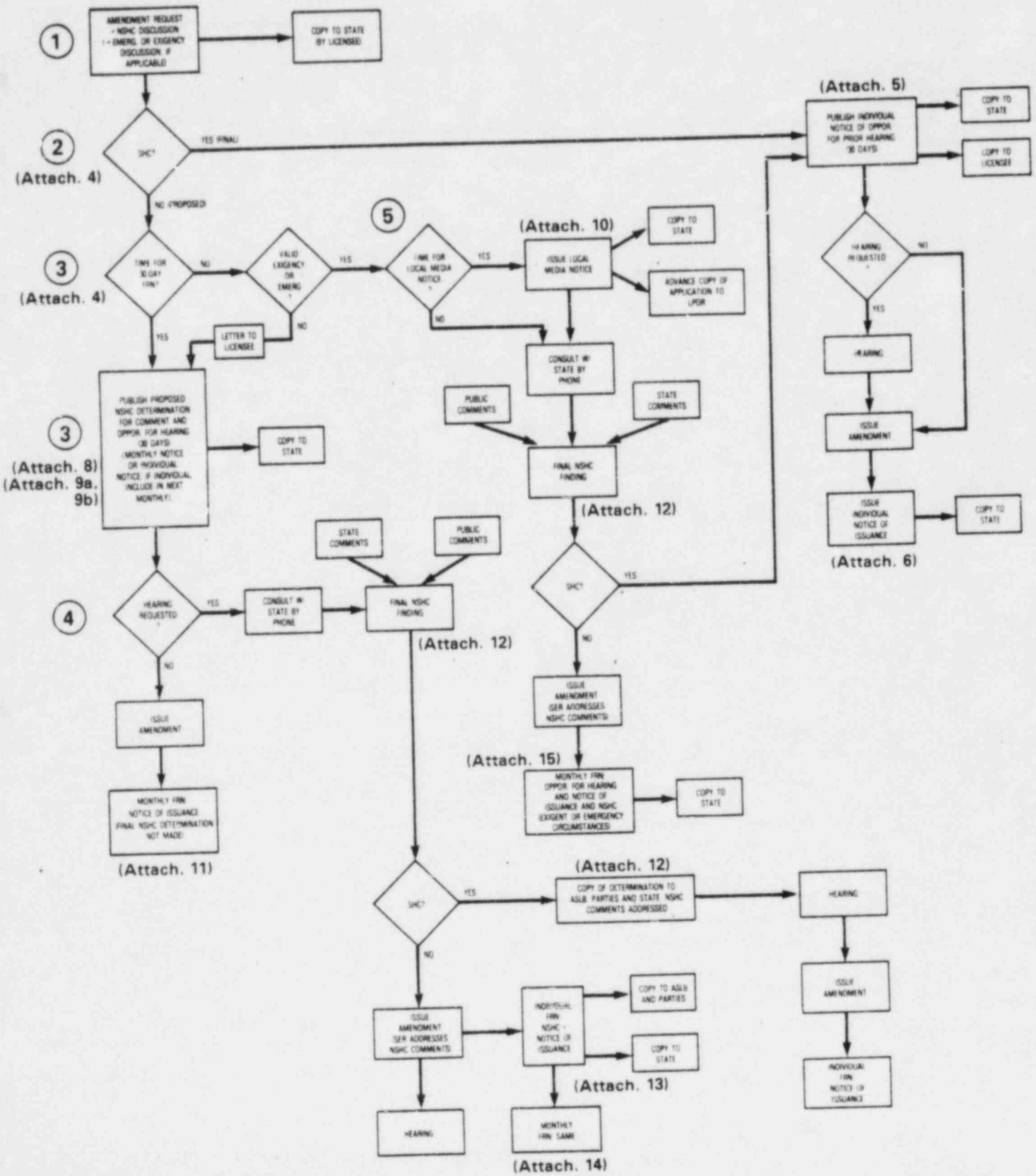
For these reasons, as a matter of policy, I would not permit the use of the Sholly amendment authority to approve reracking amendments prior to the completion of any requested hearing. I would therefore have added a provision to the Commission's interim final rule that would have required, as a policy matter, the completion of any requested hearing on a spent fuel pool reracking amendment before Commission approval of the amendment.

report of that Committee on the bill (Senate Report 97-113) makes it abundantly clear that the Committee did not intend the Sholly amendment to be used by the Commission to approve reracking amendments in advance of the completion of a requested hearing. Although the report of the Conference Committee on the bill did not repeat this admonition, there is no evidence to indicate a contrary view by the House-Senate conferees on the bill or by the two House Committees that considered the legislation.

Moreover, I believe that the use of the Sholly amendment authority to approve reracking amendments before the completion of any required hearing goes far beyond the justification offered by the Commission when it requested the Sholly amendment. In requesting the enactment of the Sholly amendment, the Commission described in some detail the situations in which it foresaw the need for this authority. The Commission emphasized the need for a large number of unforeseen and unanticipated changes to the detailed technical specifications in the operating licenses for nuclear powerplants that arise each year through such activities as refueling of the plant. The Commission argued that the need to hold a hearing on each of these changes, if one is requested, would be burdensome to the Commission and could disrupt the operation of a number of plants. In order to avoid this problem, the Commission asked the Congress to reinstate the authority that the Commission had exercised in similar situations since 1962. A reracking amendment is substantially different from the situations described by the Commission in requesting the Sholly amendment, because the need for reracking can be anticipated, because reracking involves a substantial physical

FLOW DIAGRAM

STATE CONSULTATION, NOTICING AND NO SIGNIFICANT HAZARDS CONSIDERATION PROCEDURES



Attachment 4
DLOP 228

INITIAL

NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION

AND NOTICING ACTION

Docket No. _____ Facility: _____

Licensee: _____ Date of application _____

Request for: _____

_____

_____

_____

Initial Determination:

( ) Proposed determination - amendment request involves no significant hazards considerations (NSHC).

( ) Final determination - amendment request involves significant hazards considerations (SHC).

Basis for Determination

( ) Licensee's NSHC discussion has been reviewed and is accepted.

( ) Other (state). _____

_____

_____

_____

_____

_____

_____ (attach additional sheets as needed)

Initial Noticing Action: (Attach appropriate notice or input for monthly FRN)

1. ( ) Monthly FRN. Notice of opportunity for hearing (30 days) and request for comments on proposed NSHC determination -- monthly FRN input is attached (Attachment 8).

2. ( ) Individual FRN. Same notice matter as above. Time does not allow waiting for next monthly FRN (Attachments 9a and 9b).

(This form should be typed except for unusual, urgent circumstances.)

3. ( ) No initial FRN. Valid exigent circumstances exist (evaluated below). Local media notice requesting public comments on proposed NSHC determination is attached (Attachment 10).

4. ( ) No initial FRN or local media notice. A valid emergency situation exists (evaluated below) and there is no time for public notice on proposed NSHC determination. (No attachment)

5. ( ) Individual FRN. Licensee's claim of exigent or emergency circumstances is invalid (evaluated below). Notice of opportunity for hearing (30 days) and request for comments on proposed NSHC determination is attached (Attachments 9a and 9b). Letter of explanation to licensee is also attached.

6. ( ) Individual FRN. The amendment request involves SHC. Notice of opportunity for prior hearing is attached (Attachment 5). Letter to licensee also attached.

Evaluation of exigent or emergency circumstances (if applicable): _____

_____

_____

_____

_____

_____

_____ _____

_____

_____ (attach additional sheets as needed)

Approvals: Date

1. _____ _____
(Project Manager)

2. _____ _____
(Branch Chief)

3. _____ _____
(OELD)

Additional approval (for noticing action types 4, 5 and 6)

4. _____ _____
(Assistant Director)

Additional approval (for noticing action types 4 and 5):

5. _____ _____
(Director, Division of Licensing)

Attachment 5
DLOP 228

SAMPLE INDIVIDUAL FR NOTICE OF
OPPORTUNITY FOR PRIOR HEARING

7590-01

UNITED STATES NUCLEAR REGULATORY COMMISSION

(LICENSEE)

DOCKET NO. _____

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT

TO FACILITY OPERATING LICENSE AND

OPPORTUNITY FOR PRIOR HEARING

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. _____, issued to name of licensee (the licensee), for operation of the facility name located in location.

The amendment would revise the provisions in the Technical Specifications relating to describe changes being made, in accordance with the licensee's application for amendment dated _____.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By (30 days after publication in FR), the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request

for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR §2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be premitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within

the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Branch Chief name: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this FEDERAL REGISTER notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to licensee's attorney's name and address, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic

Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated _____, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N. W., Washington, D. C. and at the local PDR.

Dated at Bethesda, Maryland this _____ day of _____, 19____.

FOR THE NUCLEAR REGULATORY COMMISSION

Chief
Branch
Division of Licensing

copy to:
Licensee
State

Attachment 6
DLOP 228

SAMPLE INDIVIDUAL NOTICE OF
ISSUANCE OF AMENDMENT

7590-01

U. S. NUCLEAR REGULATORY COMMISSION

(LICENSEE)

DOCKET NO. _____

NOTICE OF ISSUANCE OF AMENDMENT TO

FACILITY OPERATING LICENSE

[AND NEGATIVE DECLARATION]*

The U. S. Nuclear Regulatory Commission (Commission) has issued Amendment No.___ to Facility Operating License No. _____, issued to (name of licensee) (the licensee), which revised the Technical Specifications for operation of the (name of facility) (the facility) located in (location). The amendment was effective as of the date of its issuance.

The amendment (general description and changes made) _____

_____.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the FEDERAL REGISTER on (date and FR citation). [No request for a hearing or petition for leave to intervene was filed following this notice.] or [A request for a hearing was filed on (date) by (petitioner). (Provide brief history of proceeding and decision)].

*Where appropriate. See 10 CFR 51.50 for noticing requirements where an EIS has been prepared.

[The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR §51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.] or [The Commission has prepared an Environmental Impact Appraisal related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated _____.

For further details with respect to the action see (1) the application for amendment dated _____, (2) Amendment No. ____ to License No. _____, and (3) the Commission's related Safety Evaluation [and Environmental Impact Appraisal]. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N. W., and at the ___(local PDR)_____. A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this _____day of _____, 19___.

FOR THE NUCLEAR REGULATORY COMMISSION

Chief
Branch
Division of Licensing

Copy to:
Licensee
State

Attachment 7
DLOP - 228

SAMPLE MONTHLY

FEDERAL REGISTER NOTICE

(7590-01)

NUCLEAR REGULATORY COMMISSION

MONTHLY NOTICE

AMENDMENTS TO OPERATING LICENSES INVOLVING

NO SIGNIFICANT HAZARDS CONSIDERATIONS

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing its regular monthly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to 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.

This monthly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last monthly notice which was published on _____.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By (30 days after publication in FR), the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR §2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has

filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be

delivered to the Commission's Public Document Room, 1717 H Street, N.W. Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Branch Chief): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this FEDERAL REGISTER notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

****

Licensee: Docket No.:

Facility: Location:

Date of amendment request: Description of amendment request:

Basis for proposed no significant hazards consideration determination:

Local PDR location:

Attorney for licensee: NRC Branch Chief:

****

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this regular monthly notice. They are repeated here because the monthly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

****

Licensee: Docket No.:

Facility: Location:

Date of amendment request: Description of amendment request:

Date of publication of individual notice in FR:

Expiration date of individual notice:

****

NOTICE OF ISSUANCE OF AMENDMENT TO

FACILITY OPERATING LICENSE

During the 30-day period since publication of the last monthly notice, the Commission has issued the following amendments. The Commmission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions were published in the FEDERAL REGISTER as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless indicated otherwise, the Commission has determined that the issuance of the amendments will not result in any significant environmental impact and that pursuant to 10 CFR §51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments. If the Commission

has prepared an Environmental Impact Appraisal related to these actions, it is so indicated. If indicated, this notice constitutes a negative declaration and indicates that the Commission has concluded that an environmental impact statement is not warranted because there will be no environmental impact statement attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Impact Appraisals as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N. W., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Director, Division of Licensing.

****

Licensee: Docket No.:

Facility: Location:

Date of amendment request: Description of amendment request:

Date of issuance: Effective date:

Amendment No.: Facility Operating License No.:

Amendment revised the (TS)(license)(both):

Date of initial notice in FR:

The Commission's related evaluation of the amendment is contained in:

No significant hazards consideration comments received: Source:

Location of local PDR:

****

NOTICE OF ISSUANCE OF AMENDMENT TO

FACILITY OPERATING LICENSE AND FINAL

DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION

During the 30-day period since publication of the last monthly notice, individual notices of issuance of amendments have been issued for the facilities as listed below. These notices were previously published as separate individual notices. They are repeated here because this monthly notice lists all amendments that have been issued for which the Commission has made a final determination that an amendment involves no signficant hazards consideration.

In this case, a prior Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing was issued, a hearing was requested, and the amendment was issued before any hearing because the Commission made a final determination that the amendment involves no significant hazards consideration.

Details are contained in the individual notice as cited.

****

Licensee:

Docket No.:

Facility:

Location:

Date of application for amendment:

Brief description of amendment:

Date of issuance:

Effective date:

Amendment No.:

Facility Operating License No.:

Date of individual notice in FR:

Location of local PDR:

****

NOTICE OF ISSUANCE OF AMENDMENT TO
FACILITY OPERATING LICENSE AND FINAL
DETERMINATION OF NO SIGNIFICANT HAZARDS
CONSIDERATION AND OPPORTUNITY FOR HEARING
(EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the 30-day period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commssion has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In emergency circumstances where time does not allow for public comment, the State was consulted by telephone whenever possible before issuance.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless indicated otherwise, the Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR §51.5(d)(4) an environmental impact statement or negative declaration and environmental impact apraisal need not be prepared in connection with issuance of the amendment. If the Commission has prepared an Environmental Impact Appraisal related to the action, it is so indicated. If indicated, this notice constitutes a negative declaration and indicates that the Commission has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility.

For further details with respect to the action see (1) the application for amendment (2) the amendment to Facility Operating License, (3) the Commission's related letter, Safety Evaluation and/or Environmental Impact Appraisal, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N. W., Washington, D. C., and at the local public document room for the particular facilities involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By (30 days after publication in FR), the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR §2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W. Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Branch Chief): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this FEDERAL REGISTER notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained

absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

****

Licensee: Docket No.:

Facility: Location:

Date of application for amendment: Brief description of amendment:

Date of issuance: Effective date:

Amendment No.: Facility Operating License No.:

Amendment revised the (TS)(license)(both):

Press release issued requesting comments as to proposed no significant hazards consideration:

Comments received: Source:

The Commission's related evaluation is contained in:

Attorney for licensee: Local PDR location:

****

FOR THE NUCLEAR REGULATORY COMMISSION

Chief, (Responsible supervisor for monthly FR Notices)
Branch
Division of Licensing

External Distribution
States with Actions in this Notice
Licensees with Actions in this Notice

Internal Distribution:
BCs
LAs
PMs with actions in this notice

SAMPLE MEMORANDUM REQUESTING
INPUT INTO MONTHLY FR NOTICE

MEMORANDUM FOR: (Responsible supervisor for Monthly FR Notices)

FROM: (Branch Chief)

SUBJECT: REQUEST FOR PUBLICATION IN MONTHLY FR NOTICE - NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR A HEARING

Licensee: Docket No.

Facility: Location:

Date of amendment request:

Description of amendment request:*

Basis for proposed no significant hazards consideration determination.*

Local Public Document Room location:

Attorney for licensee: (name and address)

NRC Branch Chief: (name)

(Branch Chief)

cc: Project Manager
Licensing Assistant

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* See page 12 of this procedure for required content.

SAMPLE INDIVIDUAL FR NOTICE OF PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

(7590-01)

UNITED STATES NUCLEAR REGULATORY COMMISSION

(LICENSEE)

DOCKET NO. _____

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The U. S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. _____ , issued to (name of licensee) (the licensee), for operation of the _____ (facility name) located in _____ (location) _____.

The amendment would _____ (describe changes being made)* _____ in accordance with the licensee's application for amendment dated _____.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

*See page 12 of DLOP-228 for required content.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commisson's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possiblity or a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

(Basis for proposed determination)*

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

*See page 12 of DLOP-228 for required content.

By (30 days after publication in FR), the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR §2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has

filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W. Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Branch Chief): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this FEDERAL REGISTER notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to (licensee's attorney's name and address), attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the (Local PDR).

Dated at Bethesda, Maryland, this day of

FOR THE NUCLEAR REGULATORY COMMISSION

(BRANCH CHIEF)
Operating Reactors Branch #
Division of Licensing

NOTE: Attachment 9b must be completed and approved as soon as this notice is published in the Federal Register.

Copy to:
Licensee
State

Attachment 9b
DLOP 228

SAMPLE MEMORANDUM REQUESTING
INPUT INTO MONTHLY FR NOTICE

MEMORANDUM FOR: Responsible Supervisor for Monthly FR Notices)

FROM: (Branch Chief)

SUBJECT: REQUEST FOR PUBLICATION IN MONTHLY FR NOTICE - NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING (REPEAT OF INDIVIDUAL NOTICE)

Licensee: Docket No. 50-

Facility: Location:

Date of amendment request:

Brief description of amendment:

Date of publication of individual notice in Federal Register: (date), (page).

Expiration date of individual notice: (Date)

Local Public Document Room Location: _____

(Branch Chief)

cc: Project Manager
Licensing Assistant

NOTE: This memorandum should be completed as soon as the Federal Register publication date and page number of the associated individual notice are known.

SAMPLE MEMORANDUM TO REGIONAL PUBLIC
AFFAIRS OFFICER AND PRESS RELEASE

MEMORANDUM FOR: _____
Public Affairs Officer
Region ___

FROM: (Branch Chief)

SUBJECT: PROPOSED PRESS RELEASE

Attached is a proposed press release relating to an application for an amendment to the operating license for the _____(name of facility)_____ dated _____.

Because of exigent circumstances, time does not allow for normal publication in the Federal Register.

It is requested that this announcement be released as soon as possible to the media in the area of the facility and that a copy be sent to the State official and licensee.

(Branch Chief)

Attachment:
Press release

cc/attachment

Director, OPA
Assistant Director
Project Manager
Director/DL
OELD
Licensing Assistant

(When this form is approved, an advance copy of the application should be sent to the LPDR. Contact LPDR Branch Chief for assistance.)

SAMPLE PRESS RELEASE

The Nuclear Regulatory Commission staff has received an application dated (date) from (licensee) for an amendment to the operating license for the (facility) located in (location).

If approved, the amendment would (describe request)*

(Licensee) has requested NRC action on its request by (date).

Following an initial review of this application, the staff has made a proposed (preliminary) determination that the requested amendment involves no significant hazards consideration. Under NRC regulations, this means that the proposed amendment does not involve a significant increase in the probability or consequences of an accident, would not create the possibility of a new or different kind of accident, or involve a significant reduction in a safety margin.

(Describe basis for determination.)*

The Commission has determined that due to exigent circumstances, there is no time to publish for public comment before issuance its usual notice in the Federal Register of the proposed action. The exigent circumstances result from _____.

If the proposed determination becomes final, the staff will issue the amendment without first offering an opportunity for a public hearing. An opportunity for a hearing will be published in the Federal Register at a later date and any hearing request will not delay the effective date of the amendment.

If the staff decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the Federal Register and, if a hearing is granted, it will be held before the amendment is issued.

Comments on the proposed determination may be telephoned to (name), Chief of (branch), by collect call to (commercial number). All comments received by (date) will be considered in reaching a final determination. A copy of the application may be examined at the NRC's local public document room located at (location).

*See page 12 of DLOP 228 for required content.

Copy to: (by Regional PAO)
1. Licensee
2. State official

Attachment 11
DLOP 228

SAMPLE MEMORANDUM REQUESTING
INPUT INTO MONTHLY FR NOTICE

MEMORANDUM FOR: (Responsible Supervisor for Monthly FR Notices)

FROM: (Branch Chief)

SUBJECT: REQUEST FOR PUBLICATION IN MONTHLY FR NOTICE - NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

Licensee: Docket No. 50-

Facility: Location:

Date of application for amendment:

Brief description of amendment:

Date of issuance: Effective date:

Amendment No. Facility Operating License No.:

Amendment revised the (Technical Specifications) (license) (both).

Date of initial notice in Federal Register: (date) (page).

The Commission's related evaluation of the amendment is contained in a (letter dated_____) (Safety Evaluation) (Environmental Impact Appraisal).

No significant hazards consideration comments received (Yes) (No).

Source: (public) (State)_____.

Location of Local Public Document Room:

(Branch Chief)

cc: Project Manager
Licensing Assistant

Attachment 12
DLOP 228

FINAL NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION

Docket No. _____ Facility _____

Licensee: _____ Date of application _____

1. Attach initial NSHC determination (Attachment 4) relating to this action.

2. Summary of State telephone consultation:

3. Summary of any public comments received by telephone:

4. Attach any written State or public comments regarding NSHC.

5. Final determination

   ( ) The amendment request involves no significant hazards consideration.

   ( ) The amendment request involves a significant hazards consideration.

6. Basis for determination and response to comments received. (Attach additional sheets, if necessary.)

7. Concurrences: Date

   a. _____ _____
   (Project Manager)

   b. _____ _____
   (Branch Chief)

   c. _____ _____
   (Assistant Director)

   d. _____ _____
   (OELD)

8. Approved:

   _____ _____
   (Director, Division of Licensing)

Attachment 13
DLOP 228

SAMPLE INDIVIDUAL NOTICE OF
ISSUANCE OF AMENDMENT AND
FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION

7590-01

U. S. NUCLEAR REGULATORY COMMISSION

(LICENSEE)

DOCKET NO. _____

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY
OPERATING LICENSE
[AND NEGATIVE DECLARATION]*
AND FINAL DETERMINATION OF NO SIGNIFICANT
HAZARDS CONSIDERATION

The U. S. Nuclear Regulatory Commission (Commission) has issued Amendment No. ___ to Facility Operating License No. _____, issued to (name of licensee) (the licensee), which revised the Technical Specifications for operation of the (name of facility) (the facility) located in (location) ___. The amendment was effective as of the date of its issuance.

The amendment (general description and changes made) _____.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the FEDERAL REGISTER on (date and FR citation). A request for a hearing was filed on (date) by (petitioner) .

*Where appropriate. See 10 CFR 51.50 for notice requirements where an EIS has been prepared.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, the amendment has been issued and made immediately effective and any hearing will be held after issuance.

[The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR §51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.] or [The Commission has prepared an Environmental Impact Appraisal related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated _____.]

For further details with respect to the action see (1) the application for amendment dated _____, (2) Amendment No. _____to Facility Operating License No. _____, and (3) the Commission's related Safety Evaluation [and Environmental Impact Appraisal]. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N. W., Washington, D. C., and at the _____(local PDR)_____.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this _____ day of _____, 19___.

FOR THE NUCLEAR REGULATORY COMMISSION

Chief
Branch
Division of Licensing

Copy to:
State
ASLB
Parties
Petitioners

Note: Attachment 14 must be completed and approved with this notice.

Attachment 14
DLOP 228

SAMPLE MEMORANDUM REQUESTING
INPUT INTO MONTHLY FR NOTICE

MEMORANDUM FOR: (Responsible Supervisor for Monthly FR Notice)

FROM: (Branch Chief)

SUBJECT: REQUEST FOR PUBLICATION IN MONTHLY FR NOTICE - NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION (REPEAT OF INDIVIDUAL NOTICE)

Licensee: Docket No. 50-

Facility: Location:

Date of application for amendment:

Brief description of amendment:

Date of issuance: Effective date:

Amendment No.: Facility Operating License No:

Date of individual notice in Federal Register: (date) (page)

(Branch Chief)

cc: Project Manager
Licensing Assistant

SAMPLE MEMORANDUM REQUESTING
INPUT INTO MONTHLY FR NOTICE

MEMORANDUM FOR: (Responsible supervisor for Monthly FR Notice)

FROM: (Branch Chief)

SUBJECT: REQUEST FOR PUBLICATION IN MONTHLY FR NOTICE - NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

Licensee: Docket No.

Facility: Location:

Date of application for amendment:

Brief description of amendment:

Date of Issuance: Effective Date:

Amendment No. Facility Operating License No:

Amendment revised the (Technical Specifications)(license) (both).

Press release issued requesting comments as to proposed no significant hazards consideration: (Yes) (No)

Comments received: (Yes)(No). Source: (public) (State)

The Commission's related evaluation is contained in a (letter dated) (Safety Evaluation) (Environmental Impact Appraisal).

Attorney for licensee:

Local public document room location:

(Branch Chief)

cc: Project Manager
Licensing Assistant