

AA61-2 PDR



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

AUG 14 1981

MEMORANDUM FOR: G.H. Cunningham
Office of the Executive
Legal Director

FROM: R.M. Bernero, Director
Division of Risk Analysis
Office of Nuclear Regulatory Research


SUBJECT: DRAFT REGULATIONS TO IMPLEMENT ANTICIPATED LEGISLATION
ON (1) INTERIM OPERATING AUTHORITY AND (2) THE "SHOLLY
AMENDMENT"

Your routing and transmittal slip dated August 12, 1981 forwarded for comment a draft Commission paper, with four enclosures, on the implementation of anticipated legislation. Due to the short review time allowed, comments due prior to August 15, 1981, I have restricted the review to the portions related to the Sholly amendment.

Enclosure 3, the draft Federal Register Notice for no significant hazards determination, p. 12 states "A summary of the comments along with a comment analysis is also available for examination and copying for a fee at the Public Document Room." There was no summary or analysis attached to the Commission Paper and such documents are not currently in the PDR. It is recommended that a summary and analysis be attached as an enclosure.

Enclosure 3 p.10 identifies the fact that the proposed rule that was published on March 28, 1980 was in response to a May 7, 1978 petition for rulemaking that was docketed as PRM 50-17. I recommend that the preamble portion of Enclosure 3 be revised to include a definitive statement that the action in the Federal Register Notice completes the Commission's action on PRM 50-17.

The attached marked up pages provide editorial and mirror comments.


R.M. Bernero, Director
Division of Risk Analysis
Office of Nuclear Regulatory
Research

- Enclosures:
1. Marked up pages
 2. CP p.4
 3. Encl. 3, pp.4, 11, 18, 20-24
 4. Encl. 4, pp.3-6, 9, 10

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10pp

will submit revised regulations to the Commission for approval at an early affirmation session.

*CP
1/18/81*

William J. Dircks
Executive Director for Operations

Enclosures:

1. Summary of legislative status.
2. Rule amending 10 CFR Parts 50 and 2 to implement the interim operating license authority in Pub.L. 97-xxx. Tab A - Text of section 192, as it would be amended by S. 1207, as reported.
3. Amendments to 10 CFR Parts 2 and 50 to implement the Sholly Amendment. (Criteria for no significant hazards consideration determination.)
4. Amendments to 10 CFR Parts 2 and 50 to implement the Sholly Amendment (criteria for public notice and procedures for state consultation).

*See Enc 3 p 18
mark up*

The following items have been required items in Commission Papers developed by most of the offices. You may want to consider modifying the paper. It is realized that this is in format an INFORMATION PAPER but in fact it may be the final paper on the subject other than the paper that tells the Commissioners that Congress acted as was expected.

- 1) The Regulations Coordinating Committee requires that an enclosure addressing the periodic and systematic review be prepared
- 2) The EDO has required in the paper a statement in regard to resources of the Commission and the affected persons.
- 3) There is no mention of the direct distribution to the interested persons in accordance with the current instructions.
- 4) What about a press release? Will one come later?
- 5) What about the Congressionals? Will they come later?
- 6) What about the "enviornmental trappings"? Statement, declaration or what have you?
- 7) What about cost/benefit or value/impact or at least a statement that we don't have to do one in this case.

Spill Env 3
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for a hearing from an interested person. Pub. L. _____ also directs NRC to promulgate regulations establishing:

Reason
that location
amendment
amendments to 189.

1. Standards for determining whether an amendment to a license involves no significant hazards consideration;
2. Criteria for providing or dispensing with prior notice and public comment on such a determination; and
3. Procedures for consultation on such a determination with the State in which the facility of the licensee requesting the amendment is located.

It should be noted that Section 301, in pertinent part, separates the standards for determining whether an amendment involves no significant hazards consideration (now used with respect to prior noticing and opportunity for hearing) from the criteria for providing or dispensing with prior notice and public comment on this determination.

Legislation Before the Public L. Amendments

Prior to amendment, Section 189a. of the Act provided 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 section 103 or 104b. of

Statute in effect prior to July 1951

Govt. staff

existing licenses. Further, the petitioner proposed that, if the staff reaches a negative conclusion as to both of these criteria, the proposed amendment must be considered not to involve a significant hazards consideration.

The Commission sought, in issuing the proposed rule, to improve the licensing process not only as it relates to the granting of amendments to operating licenses, but also to construction permits, by specifying in the regulations criteria with respect to the meaning of "no significant hazards consideration." In the preamble of that rule, the Commission explained that it does not agree with the petitioner's proposed criteria 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 staff criteria and 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 the proposed rule. X

The notice of proposed rulemaking contained revised criteria to be incorporated into Part 50, and the rulemaking preamble contained examples of amendments to a construction permit or operating license that are considered likely and not likely to involve a significant hazards consideration.

development of

Good
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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.

(viii) An extension of the date, in a construction permit, for the completion of construction.

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

Finally, as directed by the Committee on Environment and Public Works, the Commission will provide to it a monthly report on the Commission's determinations on no significant hazards consideration.

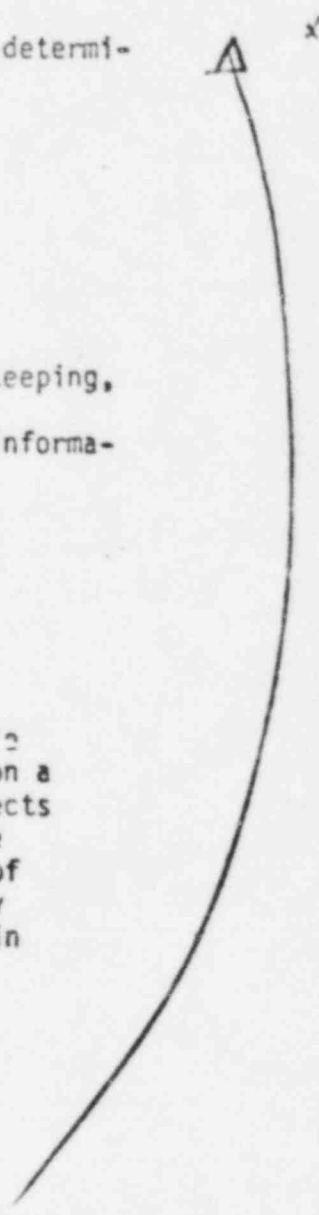
Paperwork Reduction Act

This final rule contains no new or amended requirements for recordkeeping, 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 hereby certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. 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

*I recommend that
the C.P. address who
will prepare the
monthly report.*



*Proposed
8/1/81*

*Incremental the
text of 2.105(a)(1) to
included in the
draft FEN
to some
space at
cause to deleted
from the copy sent
to the FR*

2. In § 2.105, paragraph (a)(3) is revised, paragraphs (a)(4) through (a)(8) are redesignated as paragraphs (a)(5) through (a)(9), and a new paragraph (a)(4) is added to read as follows:^{1/}

§2.105 Notice of proposed action.

(a) If a hearing is not required by the Act or this Chapter, and if the Commission has not found that a hearing is in the public interest, it will prior to acting thereon, cause to be published in the FEDERAL REGISTER a notice of proposed action with respect to an application for:

(3) An amendment of a license specified in paragraph (a)[(1) or] (2) of this section and which involves a significant hazards consideration.

(4) An amendment to an operating license or to a construction permit for a production or utilization facility licensed under sections 103 or 104b. of the Act or a testing facility licensed under section 104c. when the Commission, in its analysis using the criteria in §50.92 of this chapter, determines that there is a significant hazards consideration;

or *** ←

(42 U.S.C. 2132-2135, 2233, 2239).

^{1/} Additions to the currently effective regulation are underscored and deletions are within brackets. Changes to the proposed amendments that were published in the Federal Register on March 28, 1980, 45 FR 20491, are indicated with a line in the margin and with arrows (→) and asterisks (***) ←. Before publishing in the Federal Register, the arrows, underscores, brackets, the material in the brackets and within the arrows, and this footnote will be deleted.

*The material to be
deleted is not in
accord with the
last note*

*Delete the (***)
but keep the →*

PART 50 - DOMESTIC LICENSING OF
PRODUCTION AND UTILIZATION FACILITIES

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

AUTHORITY: Secs. 103, 104, 161, 182, 183, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246 (42 U.S.C., 5841, 5842, 5846), unless otherwise noted. Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.92 also issued under Pub.L. _____, Stat. _____ (____ U.S.C. _____). Sections 50.100-50.102 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), §50.54 (i) issued under section 161i, 68 Stat. 949 (42 U.S.C. 2201(i)), §§50.70, 50.71 and 50.78 issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)), and the laws referred to in the Appendices.

(4) 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

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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, using the criteria in §50.92(b), it may dispense with notice and publication and may issue the amendment.

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

[50.91] ←
→ § 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.

The order should be reversed to show new 50.92 and to remove 50.91

Handwritten notes: "Encl 3" and "1/16/1"

(b) The Commission will determine that a proposed amendment to an operating license or construction permit involves no significant hazards consideration, unless it finds that operation of the facility in accordance with the proposed amendment would (1) involve a significant increase in the probability or consequences of an accident from any accident previously evaluated, (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.

(c) If the Commission determines that the application involves the material alteration of a licensed facility, it will issue a construction permit before it issues [will be issued prior to the issuance of] the amendment to the license.

(d) If the Commission determines that the amendment involves a significant hazards consideration, [the Commission] it 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) In making a determination that a proposed amendment to a license or construction permit involves no significant hazards consideration, the Commission will consider whether operation of the facility in accordance with the proposed amendment would (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create

...
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the possibility of an accident of a type different from any evaluated previously, or (3) involve a significant reduction in a margin of safety.

(c) If the Commission reaches a negative conclusion on all criteria set forth in (b)(1), (2) and (3) of this section, the proposed amendment shall be considered to involve no significant hazards consideration. ←

what finding - safety
what determination - no significant hazards consideration
Draft Amend 4 5/11/81

involving no significant hazards consideration, and (b) to provide for consultation on such a determination with the State in which the facility is located.

As discussed in the preamble to the final rule, it is the apparent congressional intent that criteria for prior public notice and comment be separated from the standards for making the determination of no significant hazards consideration. The Committee on Environment and Public Works stated:

The requirement in section 301 that the Commission promulgate criteria for providing or dispensing with prior notice and public comment on a proposed determination that a license amendment involves no significant hazards consideration reflects the intent of the Committee that, wherever practicable, the Commission should publish notice of and provide for public comment on, such a proposed determination. The Commission has advised the Committee that in some cases the need to issue the proposed amendment will arise quickly, and failure to act on the amendment may result in the shut-down or derating of the plant. The Committee recognizes that the need to act promptly in such situations may foreclose the opportunity for prior public notice and comment. However, in other cases, the Committee expects the Commission to exercise its authority in a manner that will provide for prior public notice and comment. (Emphasis added.) Id., at p. 15.

The Commission has reviewed its present procedures and the choices presented by the legislation. There are apparently three alternatives for consideration. It can notice for public comment a request for an amendment: (1) when the application is received, (2) after a determination is made on no significant hazards consideration, or (3) after a finding is made and the amendment issued or the matter docketed for hearing. Noticing a request for an amendment when it is received is not only simple but has the added advantages of

clarify - later it is "ultimate finding" or "request safety finding" or "final finding"

to the Nuclear Regulatory Commission
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Draft End + label

allowing the public to comment and providing an opportunity for the staff to analyze the comments before a determination is made on no significant hazards consideration. Moreover, it clearly complies with Congress' expressed intent. Its two principal disadvantages are the added paperwork burden and the problem that in numerous instances the staff would have to await public comments before it could make routine and simple determinations.

Noticing an amendment request after the no significant hazards consideration ^{determination} has been made apparently complies with the congressional intent and allows the public to see the determination and comment on it. It has several disadvantages, though. First, it involves a paperwork burden similar to the first choice. Second, and more important, since the determination on no significant hazards consideration may take time, this period coupled with the waiting period for public comment before the ^{make lib p 3} ultimate finding on the amendment can be made, in numerous instances could put the staff in the position of acting on a request at the 11th hour in order to avoid derating or shutting-down the plant, thereby foreclosing meaningful public comment and avoiding the intent of Congress. Third, this choice suffers from the possibility and appearance of a prejudgment about the ^{make lib p 3} requisite determination.

The third alternative, noticing an amendment request after the ^{make lib p 3} final finding is made and the amendment issued or the matter docketed for hearing, follows the Commission's procedure before Sholly; however, it clearly does not comply with Congress' intent which specifies public notice and comment on a proposed determination.

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The Commission proposes to couple its present practice of providing notice after issuance of an amendment with the first alternative, noticing for public comment on whether a no significant hazards consideration finding should be made when a request for an amendment is received. It normally will provide thirty-days' prior public notice for comment by publication in the FEDERAL REGISTER.

If during the period of notice for comment, the Commission receives a request for a hearing or an expression of interest in the subject matter of the pending amendment which is reasonably construed as a request for a hearing, it will follow its present procedures, deferring judgment on the request until after it has made the determination on no significant hazards consideration. If the person requesting a hearing and intervention meets the provisions for intervention called for in 10 CFR 2.714, the Commission normally will hold a hearing only after it issues an amendment, unless it determines that a significant hazards consideration is involved. The Commission may also hold a prior hearing if it finds that it is in the public interest to do so.

If the Commission receives an amendment request where the need to issue the proposed amendment arises quickly, and failure to act on the amendment may result in the shut-down or derating of the plant, the Commission will not delay its no significant hazards consideration analysis ^{of the} to await public comments. In that instance, if it determines that there is no significant hazards consideration and makes the requisite safety findings, it will issue the amendment but, as discussed above, a hearing may be held after issuance

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of the amendment. On the other hand, if in that instance the Commission determines that there is a significant hazards consideration, it will not issue the requested amendment without prior notice, unless it finds that the public health, safety, or interest, or the common defense and security so requires. If it cannot make the latter finding, it will provide thirty-days' prior notice on the requested amendment for both public comment and opportunity to request a hearing.

The Commission would revise its present procedures in the ways indicated.

State Consultation

Section 301 of the bill also requires the Commission to promulgate procedures for consulting with a State in which the relevant facility is located on a determination that an amendment to the facility license involves no significant hazards consideration. The Committee on Environment and Public Works stated with respect to this provision that:

The requirement complements the directive in section 202 that the Commission, in determining whether an amendment involves no significant hazards consideration, shall consult with the situs State. The Committee expects that the procedures for State consultation will include the following elements:

- (1) The State would be notified of a licensee's request for an amendment;
- (2) The State would be advised of the NRC's evaluation of the amendment request;
- (3) The NRC's proposed determination on whether the license amendment involves no significant hazards consideration would be discussed with the State and the NRC's reasons for making that determination would be explained to the State;

Original issued 1/11/81

secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246 (42 U.S.C., 5841, 5842, 5846), unless otherwise noted. Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.92 also issued under Pub.L. ____, Stat. ____ (U.S.C. ____). Sections 50.100-50.102 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), §50.54 (1) issued under section 161f, 68 Stat. 949 (42 U.S.C. 2201(f)), §§50.70, 50.71 and 50.78 issued under sec. 161g, 68 Stat. 950, as amended (42 U.S.C. 2201(g)), and the Laws referred to in the Appendices.

Remove the under

2. A new §50.91 is proposed to be added to Part 50 to read as follows:

§50.91 Public notice and comment; State consultation.

(a) As soon as practicable after receipt of an application for an amendment to an operating license or construction permit, the Commission shall publish in the FEDERAL REGISTER a notice of receipt of application. The notice will identify the plant concerned, briefly describe the requested amendment, and provide a 30-day comment period on the question of whether the amendment involves a significant hazards consideration. If failure to act quickly on the amendment may result in the shut-down or derating of the plant, the Commission may dispense with prior notice and public comment.

*Ampl Amend
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The Commission shall consider public comments, if any, and expeditiously make its determination on no significant hazards consideration.

(b) The Commission shall provide for State consultation as follows:

(1) As soon as practicable after receipt of an application for an amendment to a license or construction permit, the Commission shall notify the State in which the licensee's facility is located of the licensee's request for an amendment.

(2) After its evaluation of the amendment request, the Commission shall discuss with the State its resolution of the public comments received, if any, and its proposed determination on no significant hazards consideration, including its reasons for making the determination. The Commission shall consider the comments, if any, of the State official designated to consult with it in its determination on no significant hazards consideration.

X
X

(3) If failure to act quickly on the amendment may result in the shut-down or derating of the plant, the Commission may dispense with prior State consultation.

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

- (1) To veto the Commission's proposed determination;
- (2) To a hearing on the determination before the amendment becomes effective; or

*This should be clarified
a little. It is not clear
what portion of the amendment
evaluation is being addressed -
evaluation for determination -
evaluation for funding*