AA61-2 PDR

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

November 30, 1983

MEMORANDUM FOR: Edson G. Case, Deputy Director
Office of Nuclear Reactor Regulation

Darrell G. Eisenhut, Director
Division of Licensing, NRR

concurred.
Joseph J. Fouchard, Director
Office of Public Affairs

concurred
G. Wayne Kerr, Director
Office of State Programs

Gus C. Lainas, Assistant Director
for Operating Reactors, NRR

Martin G. Malsch, Deputy General Counsel
Office of the General Counsel

Victor Stello, Jr., Deputy Executive Director
for Regional Operations & Generic Requirements

FROM: William J. Olmstead
Director & Chief Counsel, Regulations Division
Office of the Executive Legal Director

SUBJECT: FINAL SHOLLY RULE ON SIGNIFICANT HAZARDS CONSIDERATIONS

Enclosed please find a draft of the subject rule with a draft of the comment response. The rule combines the two interim final rules (on standards and notice) into one. It also contains, to make it easier to follow and understand, the responses to the comments on the proposed rule on standards as well as the responses to comments on the interim final rule--many of the comments on the proposed and interim final rule were virtually identical. Some minor modifications were made to the final rule, but the structure and key principals of the two interim final rules have remained the same.

The issue of the way the examples should be handled has been left open. Many commenters suggested additions to or modifications of the examples. Some of these changes could prove very controversial and could hold up promulgation of the final rule. The simplest resolution might be to state--as has been done in numerous places in the preamble of the rule--that

the examples are merely guidelines and that the present ones are adequate as such. A more difficult resolution might be to say that the staff will publish the examples in a regulatory guide or other such document with the recommended changes it has accepted. The most difficult resolution might be to tackle the examples in the preamble of the rule. We advise against the last approach but are open to suggestions on the other two approaches.

Please send us your comments on the draft by C.O.B. December 23, 1983.

William J. Olmstead
Director and Chief Counsel
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Office of the Executive
Legal Director

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[7590-01]

NUCLEAR REGULATORY COMMISSION

10 C.F.R. Parts 2 and 50

Final Procedures and Standards on No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

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

EFFECTIVE DATE:

ADDRESSES: Copies of comments received on the amendments and of the other documents described below may be examined in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

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

SUPPLEMENTARY INFORMATION:

INTRODUCTION

Public Law 97-415, signed on January 4, 1983, among other things, directed NRC to promulgate regulations which establish (a) standards for determining whether an amendment to an operating license involves no significant hazards consideration, (b) criteria for providing or, in emergency situations, dispensing with prior notice and public comment on any such determination, and (c) procedures for consulting on such a determination with the State in which the facility involved is located. See Conf. Rep. No. 97-884, 97th Cong., 2d Sess. (1982). The legislation also authorized NRC to issue and make immediately effective an amendment to a license, upon a determination that the amendment involves no significant hazards consideration (even though NRC has before it a request for a hearing by an interested person) and in advance of the holding and completion of any required hearing.

The two interim final rules published in the FEDERAL REGISTER on April 6, 1983 (48 FR 14864) and (48 FR 14873) responded to the statutory directive that

NRC expeditiously promulgate regulations on the three items noted above. The first dealt with the standards themselves and the second with the notice and State consultation procedures. These regulations were issued, as final though in interim form, and comments have been considered on them.

The following discussion is divided into three parts. The first discusses the background for this final rule, including a discussion of the proposed rule on the standards published before passage of the legislation, as well as an overview of the interim final rules published after the legislation was enacted. See 45 FR 20491 (March 28, 1980). The second analyzes and responds to the public comments on the two interim final rules. And the third discusses the present practice and modifications made to it by the final rule.

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

The 1957 amendments to the Act were interpreted by the Commission as requiring a "mandatory hearing" before issuance of amendments to

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

> Accordingly, this section will eliminate the requirements for a mandatory hearing, except upon the application for a construction permit for a power or testing facility. Under this plan, the issuance of amendments to such construction permits, and the issuance of operating licenses and amendments to such construction permits, and the issuance of operating licenses and amendments to operating licenses, would be only after a 30-day public notice and an offer of hearing. In the absence of a request for a hearing, issuance of an amendment to a construction permit, or issuance of an operating license, or an amendment to an operating license, would be possible without formal proceedings, but on the public record. It will also be possible for the Commission to dispense with the 30-day notice requirement where the application presents no significant hazards consideration. This criterion is presently being applied by the Commission under the terms of AEC Regulations 50.59. House Report No. 1966, 87th Cong., 2d. Sess., p. 8.

Thus, according to the 1962 amendments, a mandatory public hearing would no longer be required before issuance of an amendment to a construction permit or operating license and a thirty-day prior public notice would be required only if the proposed amendment involved a "significant hazards consideration." In sum, section 189a. of the Act, now provides that, upon thirty-days' notice published in the FEDERAL REGISTER, the Commission may issue an operating license, or an amendment to an operating

license, or an amendment to a construction permit, for a facility licensed under sections 103 or 104b. of the Act, or for a testing facility licensed under section 104c., without a public hearing if no hearing is requested by any interested person. Section 189a. also permits the Commission to dispense with such thirty-days' notice and FEDERAL REGISTER publication with respect to the issuance of an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration. These provisions have been incorporated into §§ 2.105, 2.106, 50.58(a) and (b) and 50.91 of the Commission's regulations.

The regulations under the two interim final rules provide for prior notice of a "proposed action" on an application for an amendment when a determination is made that there is a significant hazards consideration and provide an opportunity for interested members of the public to request a hearing. See §§ 2.105(a)(3) and 50.91. Hence, if a requested license amendment is found to involve a significant hazards consideration, the amendment would not be issued until after any required hearing is completed or after expiration of the notice period. In addition, § 50.58(b) further explains the Commission's hearing and notice procedures, as follows:

> The Commission will hold a hearing after at least 30 days notice and publication once in the FEDERAL REGISTER on each application for a construction permit for a production or utilization facility which is of a type described in § 50.21(b) or § 50.22 or which is a testing facility. When a construction permit has been issued for such a facility following the holding of a public hearing and an application is made for an operating license or for an amendment to a construction permit or operating license, the Commission may hold a hearing after at least 30 days notice and publication once in the

> FEDERAL REGISTER or, in the absence of a request therefor by any person whose interest may be affected, may issue an operating license or an amendment to a construction permit or operating license without a hearing, upon 30 days notice and publication once in the FEDERAL REGISTER of its intent to do so. If the Commission finds that no significant hazards consideration is presented by an application for an amendment to a construction permit or operating license, it may dispense with such notice and publication and may issue the amendment.

The Commission noted in its interim final rules 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. Under its former rules, the Commission made its determination about whether it should provide a hearing before issuing an amendment together with its determination about whether it should issue a prior notice -- and the central factor in both determinations was the issue of "no significant hazards considerations." It has been argued that in practice this meant that the staff often decided the merits of an amendment together with the issue of whether it should give notice before or after it has issued the amendment. See 48 FR 14864, at 14865 (April 6, 1983). The argument arose, in part, because of some concern that the Act and the regulations did not define the term "significant hazards consideration" and did not establish criteria for determining when a proposed amendment involves "significant hazards considerations." Section 50.59 has, of course, all along set forth criteria for determining when a proposed change, test or experiment involves an "unreviewed safety question" but it was and is clear that not every such question involves a "significant hazards consideration."

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

It is important to bear in mind that there is no intrinsic safety significance to the "no significant hazards consideration" standard. Neither as a notice standard nor as a standard about when a hearing may be held does it have a substantive safety significance. Whether or not an action requires prior notice or a prior hearing, 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). In short, the "no significant hazards consideration" standard is a procedural standard which governs whether an opportunituy for a prior hearing must be provided before action is taken by the Commission, and whether prior notice for public comment may be dispensed with or shortened in some limited circumstances.

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. On February 22, 1983, the Supreme Court vacated the Court of Appeal's opinion as moot and directed to reconsider the case in light of the new legislation. On April 4, 1983, the Court of Appeals, having considered the legislation, found that the portion of its opinion holding that a hearing requested under section 189a. of the Act must be held before a license amendment becomes effective would be moot as soon as NRC promulgated the regulations to which the legislation referred. The Court also found that NRC, of course, was still under a statutory mandate to hold a hearing after an amendment became effective, if requested to do so by an interested party. Appeal Nos. 80-1691, 80-1783, and 80-1784.

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."

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 unnecessary disruption or delay in the operations of nuclear power plants by imposing regulatory burdens unrelated to significant safety matters. Subsequently, on March 11, 1981, the Commission submitted proposed legislation to Congress (introduced as S.912) that would expressly authorize it to issue a license amendment

before holding a hearing requested by an interested person, when it has made a determination that no significant hazards consideration is involved in the amendment.

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

> (2)(A) The Commission may issue and make immediately effective any amendment to an operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this Act.
>
> (B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.
>
> (C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which

> criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.

Section 12(b) of that law specifies that:

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

Thus, as noted above, the legislation authorizes NRC to issue and make immediately effective an amendment to an operating license upon a determination that the amendment involves no significant hazards considerations, even though NRC has before it a request for a hearing from an interested person. In this regard, 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. Conf. Rep. No. 97-884, 2d. Sess., at 37 (1982).

And the the Senate has stressed:

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

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

> The conferees note that the purpose of requiring prior notice and an opportunity for public comment before a license amendment may take effect, as provided in subsection (2)(C)(ii) for all but emergency situations, is to allow at least a minimum level of citizen input into the threshold question of whether the proposed license amendment involves significant health or safety issues. While this subsection of the conference agreement preserves for the Commission substantial flexibility to tailor the notice and comment procedures to the exigency of the need for the license amendment, the conferees expect the content, placement and timing of the notice to be reasonably calculated to allow residents of the area surrounding the facility an adequate opportunity to formulate and submit reasoned comments.
>
> The requirement in subsection 2(C)(ii) that the Commission promulgate criteria for providing or dispensing with prior notice and public comment on a proposed determination that a license amendment involves no significant hazards consideration reflects the conferees' intent that, wherever practicable, the Commission should publish prior notice of, and provide for prior public comment on, such a proposed determination.
>
> In the context of subsection (2)(C)(ii), the conferees understand the term "emergency situations" to encompass only those rare cases in which immediate action is necessary to prevent the shutdown or derating of an operating commercial reactor . . . The Commission's regulations should insure that the "Emergency situations" exception under section 12 of the conference agreement will not apply if the licensee has failed to apply for the license amendment in a timely fashion. In other words, the licensee should not be able to take advantage of the emergency itself. To prevent abuses of this provision, the conferees expect the Commission to independently assess the licensee's reasons for failure to file an application sufficiently in advance of the threatened closure or derating of the facility. Conf. Rep. No. 97-884, 97th Cong., 2d Sess., at 38 (1982).

C. Basis for 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

Many of the comments on the interim final rule were the same or were similar to those on the proposed rule. To provide a convenient means for future reference, the comments and responses on the proposed rule and the petition for rulemaking are consolidated and repeated here with references to the earlier FEDERAL REGISTER citations. The recent comments received on the interim final rule are then discussed and the Commission's responses are provided.

1. Petition and Proposed Rule

General

The Commission's interim final rule on standards for determining whether an amendment involves no significant hazards consideration resulted from a notice of proposed rulemaking issued in response to a petition for rulemaking (PRM 50-17) submitted by letter to the Secretary of the Commission on May 7, 1976, by Mr. Robert Lowenstein. For the reasons discussed below, the petition was denied. However, the Commission published proposed 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). Note that the proposed rule was published before passage of the legislation and that the

Congress was aware of this rule during passage of the legislation. The staff's recommendations first on a final rule and later 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.)

In issuing the proposed rule, the Commission sought to define more precisely the standards for determining when an amendment application involved significant hazards considerations. These standards would have applied to amendments to operating licenses, as requested by the petition for rule-making, and also to construction permit amendments, to whatever extent considered appropriate. The Commission later decided that these standards should not be applied to amendments to construction permits, since such amendments are very rare and normally would not be expected to involve a significant hazards consideration. It therefore modified the proposed rule accordingly. Additionally, the Commission stated in the interim final rule that it would review the extent to which and the way standards should be applied to research reactors. And it noted that, in the meanwhile, it would handle case-by-case any amendments requested for construction permits or for research reactors with respect to the issue of significant hazards considerations. 48 FR, at 14867.

Before the proposed rule on standards was published, the Commission's staff was guided, in reaching its determinations with respect to no significant hazards considerations, by standards very similar to those described in the

proposed rule and in the interim final rule. In addition, a list of examples have been used of amendments likely to involve, and not likely to involve, significant hazards considerations when the stardards are applied. These examples have been employed by the Commission in developing both the proposed rule and the interim final rule. The notice of proposed rulemaking contained standards proposed by the Comm sion 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, the standards ultimately must govern a determination about whether or not a proposed amendment involves 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. The interim final rule did not change these standards.

As a result of the legislation, the Commission formulated separate notice and State consultation procedures that provide in all (except emergency) situations prior notice of amendment requests. The standards and the examples are usually 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.

2. Comments on Proposed Rule and Responses to these Comments

a. General

Nine persons submitted comments on the petition for rulemaking and nine persons submitted comments on the proposed amendments. One of the commenters stated that all three standards were unclear and useless in that they implied a level of detailed review of amendment applications far beyond what the staff normally performs. When it promulgated the interim final rule, the Commission stated in response to this comment that it was its considered judgment that the standards have been and will continue to be useful in making the necessary reviews. 48 FR 14864, at 14867 (April 6, 1983). It added its belief that the standards when used together with the examples will enable it to make the requisite decisions. Id. In this regard, it noted that Congress was more than aware of the Commission's standards and proposed their expeditious promulgation. It quoted, for example, the

Senate Report which 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]. S. Rep. No. 97-113, 97th Cong., 1st Sess., at 15 (1981).

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. The Commission stated that 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. 48 FR, at 14868.

The Commission explained that 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). Id. 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). Id. See Section I(C)(1)(d) below.

In promulgating the interim final rule, the Commission noted that, 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. Id. The Committee 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. S. Rep. No. 97-113, 97th Cong., 1st Sess., at 15 (1981).

The Commission agreed with the Committee "that reasonable persons may differ on whether a license amendment involves a significant hazards consideration" and it 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." 48 FR, at 14868. The Commission stated its belief that the standards coupled with the examples used as guidelines help draw as clear a distinction as practicable. It decided not to include the examples in the text of the interim final 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. Id.

In promulgating the interim final rule, the Commission also noted to licensees that, when they consider license amendments outside the examples, it may need additional time for its determination on no significant hazards considerations, and that they should factor this information into their schedules for developing and implementing such changes to facility design and operation. Id.

The Commission stated its belief that the interim final rule thus went a long way toward meeting the intent of the legislation. Id. In this regard, it quoted the Conference Report, which 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).

The Commission stated that it had attempted to draft standards that are as useful as possible, and that it had tried to formulate examples that will help in the application of the standards. 48 FR, at 14868. It noted that the standards in the interim final rule were 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 Commission then explained with respect to the interim final rule that the standards and examples were as clear and certain as the Commission could make them, and it repeated the Conference Report to the effect that the standards and examples "should ensure that the NRC staff does not resolve doubtful or borderline cases with a finding of no significant hazards consideration." Id.

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," the Commission recalled that it was its general practice to make a decision about whether to issue a notice before or after issuance of an amendment together with a decision about whether to provide a hearing before or 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. Id. For instance, a commenter commenting on the proposed rule 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. Id., at 14868-69. 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.

The Commission noted in response that, in any event, the legislation had made these comments moot by requiring separation of the criteria used for providing or dispensing with public notice and comment on determinations about no significant hazards considerations from the standards used to make a determination about whether or not to have a prior hearing if one is requested. Id., at 14869. The Commission explained that under the two interim final rules,

the Commission's criteria for public notice and comment had been separated from its standards on the determination about no significant hazards considerations. Id. It noted, in fact, that under the interim final rule involving the standards it would normally provide prior notice (for public comment and an opportunity for a hearing) for each operating license amendment request. And it stated its belief that use of these standards and examples would 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 about whether to issue a license amendment. Id. It explained that it held this belief because the standards and the examples were merely screening devices for a decision about whether to hold a hearing before as opposed to after an amendment is issued and could not be said to prejudge the Commission's final decision to issue or deny the amendment request. Id. As explained above, that decision has remained a separate one, based on separate public health and safety findings.

b. Reracking of Spent Fuel Pools

Before issuance of the two interim final rules, the Commission provided prior notice and opportunity for prior hearing on requests for amendments involving reracking of spent fuel pools. When the interim final rule on standards was published, the Commission explained that it was not prepared to say that a reracking of a spent fuel storge pool will necessarily involve a significiant hazards consideration. It stated that, nevertheless, as shown by the legislative history of Public Law 97-415, specifically of section 12(a), the Congress was aware of the Commission's practice and that statements were made by members of both Houses, before passage of that

law, that these members thought the practice would be continued. Id. 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 decided not to include reracking in the list of examples that are 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 stated that it felt that the matter deserves further study. Accordingly, it instructed the staff to prepare a report on this matter; and it stated that, upon receipt and review of this report, it would revisit this part of the rule. Id. The report is described in detail in Section II(D) below.

In the interim final rule on standards, the Commission stated that, while it is awaiting its staff's report, it would make findings case-by-case on the question of no significant hazards consideration for each reracking application, giving full consideration to the technical circumstances of the case, using the standards in § 50.92 of the rule. Id. It also stated that it was not its intent to make a no significant hazards consideration finding for reracking based on unproven technology. It added, however, that, 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. And it noted that, if it determines that a particular

reracking involves significant hazards considerations, it would provide an opportunity for a prior hearing. Id.

The Commission also 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. It stated that it would 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. Id. That notice can be found at ____ FR ____ (____ ____, 1983). [This will be inserted if the Commission has acted before this package has reached it.]

c. Amendments Involving Irreversible Consequences

There was some concern in Congress about amendments involving irreversible consequences. In promulgating the interim final rule on standards, the Commission mentioned this concern and quoted the Conference Report, which 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.) Conf. Rep. No. 97-884, 97th Cong., 2d Sess., at 37-38 (1982).

The Commission noted, 48 FR, at 14869, that 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 ir 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 Commission then noted, 48 FR, at 14869, that the statement was further explained in a colloquy between Senators Mitchell and Hart, as follows:

> M . 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. 134 Cong. Rec. (Part III), at S. 13292.

In light of the Conference Report and colloquies it had quoted, the Commission stated that it would make sure "that only those amendments that clearly raise no significant hazards issues will take effect prior to a public hearing," 48 FR, at 14870, and that it would do this by providing in § 50.92 of the rule that it would review proposed amendments with a view as to whether they involve irreversible consequences. Id. In this regard, it made clear in example (iii) 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. Id.

The Commission also made it clear that the examples did not cover all possible cases, were not necessarily representative of all possible concerns, and were set out simply as guidelines. Id.

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

d. Examples of Amendments that Are Considered Likely to Involve Significant Hazards Considerations Are Listed Below

The interim final rule listed the following examples of amendments that the Commission considered likely to involve significant hazards considerations. Id. It explained that, 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. Id.

e. Examples of Amendments that Are Considered Not Likely to Involve Significant Hazards Considerations Are Listed Below

The interim final rule listed the following examples of amendments the Commission considered not likely to involve significant hazards considerations. 48 FR, at 14869. It explained that, 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. Id.

II. RESPONSES TO COMMENTS ON INTERIM FINAL RULES

The comments are described in somewhat greater detail in Attachment xx to SECY-XX.

A. Clarity of Standards

1.1 Comments

A group of commenters state that the three standards in § 50.92(c) are unclear and argue that the examples in the statement of considerations -- which they believe are clearer than the rule -- should be made part of the rule; otherwise, they argue, the examples have no legal significance.

Response

The Commission disagrees with the request. As explained before (see 48 FR 14864) in response to the comments on the proposed rule, the commenters correctly note that the examples have no binding legal significance. However, they do provide guidance to the staff, licensees and to the general public about the way the standards may be interpreted by the Commission. The Commission did consider combining the standards and examples as a single set of criteria in the interim final rule. It decided against it because (i) the standards and examples had proved useful over time, (ii) the staff had used all three standards and most of the examples well before they were published in rule form, and (iii) the approach had proved adequate. Upon reconsideration, the Commission has decided to retain them as they were set out in the interim final rule.

1.2 Comment

One commenter believes that the interim final rules "unduly" and "improperly" limit freedom of speech and that minor changes in a plant can lead to severe health and safety consequences, such as an anticipated transient without scram (ATWS) as was the case in an incident with the Salem nuclear power plant.

Response

It is unclear how the interim final rule might limit freedom of speech. It is clear, though, that some changes to a plant involve a review of whether or not previously unevaluated accidents having severe consequences are posed by the amendment request. Before any amendment is issued, the Commission is required by the Atomic Energy Act (Act) to find that adequate protection is provided to protect the public health and safety. However, a determination that an amendment involves "no significant hazards considerations" includes a finding that the change does not involve a significant increase in previously evaluated accident probabilities or consequences, that it does not present a new type of accident not previously evaluated, and that it does not involve a decrease in safety margins. Thus, the concern raised by the comment is related only to amendments that involve significant hazards. Procedures governing these types of amendments are unaffected by this rule change. See, e.g., section 182a. of the Act.

1.3 Comment

One commenter suggests that the only standard that is needed is one that simply identifies those license amendments which make an accident possible.

Response

The standard suggested by the commenter is simple to state but impractical in practice. An amendment may involve a previously reviewed issue and not alter the conclusions reached concerning accident probabilities or consequences. In such a case, the amendment may involve a system or component that is significant to an evaluation of a design basis accident and still not involve a significant hazards consideration. This suggestion shifts the issue from "significant hazards considerations" to an issue concerning whether an amendment would contribute to an accident sequence. The three standards given in the interim final rule together with the examples are directed to the issue of significant hazards.

1.4 Comments

One commenter requests that only "credible accident scenarios" should be considered in evaluating amendment requests against the first two standards. It also suggests that, with respect to the third standard (significant reduction in safety margins), the Commission should initially determine how large the existing safety margin is

before deciding whether a reduction is significant, because the extent of the existing margin is clearly relevant to the Commission's determination.

Another commenter, on the other hand, argues that it is inappropriate to specify a percentage change above which the change becomes significant. It notes that when the safety margin is three orders of magnitude, a ten percent reduction is clearly not significant, and that when the safety margin is fifteen percent, a comparable percentage reduction may be significant. It also suggests that the cumulative effects of successive changes to one system must also be considered, and not merely the individual change which is being subjected to review at any given time.

Response

The first comment is similar to the original petition (see Section I(C)(1) above) which proposed standards limited to "major credible reactor accidents." The Commission disagrees with it -- as it did previously -- because it allows too much room for argument about the meaning of "credible" in various accident scenarios and does not include accidents of a type different from those previously evaluated.

The Commission accepts the second commenter's views, as those are applicable to the second part of the first comment.

1.5 Comments

One commenter points out that the three standards are virtually identical to the criteria in § 50.59 for determining whether unreviewed safety questions exist, and states that this similarity is appropriate.

Another commenter makes the same point but notes an important difference in § 50.59, namely, that the word "significant" is absent in paragraphs (a)(2)(i) to (a)(2)(iii) of that section. It suggests that § 50.59 should be amended to make it identical with § 50.92(c).

Response

Sections 50.59 and 50.92 serve two different purposes. The criteria in § 50.59(a)(2) are used to decide whether a proposed change, test, or experiment involves an "unreviewed safety question." Section 50.59 is used to decide, in part, whether the licensee of an operating reactor may make changes to it or to the procedures as described in the safety analysis report, or whether it may conduct tests or experiments, not described in the safety analysis report, without prior Commission approval. The licensee may not make a change without such approval, if the change involves an unreviewed safety question. To insert the term "significant" into the criteria would obviously raise the threshold for making a determination. It would permit licensees to exercise far greater discretion in judging which changes require Commission review. Wide variations between licensees might be expected. If the Commission has not reviewed an issue, it should deliberate and decide whether its

review is appropriate. Therefore, the comment has been rejected. The Commission is considering a rule on this subject, as discussed in Section II(K) below.

1.6 Comment

One commenter generally agrees with the rule but believes that the word "significant" should be defined, if only to forestall court challenges by persons disagreeing with NRC. It suggests that NRC should create some sort of mechanism to resolve disputes between the staff, a State, or other parties, over whether or not an amendment request involves significant hazard considerations.

Response

The advantage of the notice provisions of this rule is that it provides an opportunity for comment on proposed determinations. Based on a particular proposal in an amendment request, the Commission welcomes any and all persons' comments about the "significance" of the proposed action. Aside from using examples as guidelines, it believes that the task of defining "significant" in the abstract is sisyphean. If disputes arise, the best way of resolving them would be under its rules of practice in 10 C.F.R. Part 2.

B. Clarity of Examples

Many commenters argue about the clarity of the various examples in the "likely" and "not likely" categories. Additionally, some want to change, to add to, or to subtract from the examples. A complete set of comments (as summarized) is attached to SECY-XX-xx.

Additionally, two commenters argue that the word "significant" in the examples should be defined so as not to leave "critical decisions to the unreviewable judgment of the staff."

Finally, another commenter requests that the guidance embodied in both sets of examples should not only be referenced in the procedures of the office of Nuclear Reactor Regulation, but that it should also be formally transmitted to all licensees in the form of a generic letter, regulatory guide, or other such document.

Response

The Commission has decided to retain the examples as they are and not to add to or subtract from them, since they are merely guidelines. The list of examples of all possible situations could prove interminably long, and is not needed. The present examples are adequate. As to the second set of comments, see the response to comment A(1.6) above. Finally, as noted above, the guidance in the examples has been sent to all licensees.

C. Classification of Decisions

Comments

Two commenters argue that the standards pose complex questions that "require a level of analysis that goes for beyond the initial sorting of issues that Congress authorized." They repeat an argument made when the standards were published as a proposed rule, namely, that "the use of these standards cannot help but require the NRC staff to make an initial determination, well before the formal hearing (if any) is held, of the health and safety merits of the proposed license amendment." And they argue that Congress did not authorize NRC to make such a determination in advance of the hearing on the merits. (A third commenter agrees with this argument). In sum, these commenters would like to see standards that simply allow for the sorting of issues, rather than, as they argue, standards that allow the staff to determine issues which are "virtually the same" as those it determines when deciding whether or not to grant the license amendment.

In this same vein, both commenters argue that the standards contravene Congress' intent in that the Commission does not avoid resolving "doubtful or borderline cases with a finding of no significant hazards consideration."

Response

The Commission disagrees with the commenters, and the previous discussions above on this very point explain its reasoning. It should

also be noted that one reason that determinations on significant hazards considerations are divided into "proposed determinations" and "final determinations" is to help sort the issues initially. In this process of sorting, the Commission's staff is charged with assuring that doubtful or borderline cases do not end up with a finding of no significant hazards consideration. As explained above, the decision about whether to issue an amendment is based on a separate health and safety determination, not on a determination about significant hazards considerations.

D. Reracking

Comments

A group of commenters state that reracking should be considered amendments that pose significant hazards considerations, in light of the Commission's past practice and the understanding of Congress that the practice would be continued.

Another group of commenters agree with the Commission's position, including the need for a staff report that would provide the basis for a technical judgment that an amendment request to expand a specific spent fuel pool may or may not pose a significant hazards consideration.

Response

In its decision to issue the two interim final rules, the Commission directed the staff to prepare a report which (1) reviews the agency's

experience to date with respect to spent fuel pool expansion reviews and (2) provides a technical judgment on the basis for which a spent fuel pool expansion amendment may or may not pose a significant hazards consideration.

The staff contracted with Science Applications, Inc. (SAI) to perform an evaluation of whether increased storage of spent fuel could pose a significant hazards consideration in light of the guidance in the interim final rule. SAI provided a report entitled, "Review and Evaluation of Spent Fuel Pool Expansion Potential Hazards Considerations." The Report Number is SAI-84-221-WA Rev. 1, dated July 29, 1983. On the basis of that report, the staff informed the Commission of the results of its study and included the SAI report. The staff paper is SECY-83-337, dated August 15, 1983. (Both the report and the study are available as indicated above.)

The staff provided the following views to the Commission.

(1) NRC experience to date with respect to spent fuel pool expansion reviews:

As the Commission noted, the staff has been providing prior notice and opportunity for prior hearing on amendments involving expansion of spent fuel pool storage capactiy. The applications were prenoticed as a matter of discretion because of possible public interest. This was the basis cited for prenoticing these applications in statements to Congressional committees. Public comments or requests to intervene have been received on 24 of the 96 applications for amendments received to date to increase the storage capacity of onsite spent fuel pools. In most cases, the comments and requests to intervene have been resolved without actual hearings before an ASLB [Atomic Safety and Licensing Board].

Of the 96 applications, 31 have been a second or third application for the same pool(s). All of these applications have proposed reracking to increase the storage capacity - that is, replacing

existing spent fuel storage racks with new racks that permit closer spacing of spent fuel assemblies. Two of the applications involved more than simply replacing the racks on the spent fuel pool floor. In one case, the capacity was increased by a method referred to as double-tiering. In this method, a rack is filled with aged spent fuel while sitting on the pool floor; once filled, the rack is raised and placed on top of another filled rack. Double-tiering was approved by the staff for Point Beach 1 and 2 by amendments issued on March 4, 1979. The other method that has been proposed to increase pool storage capacity is referred to as rod consolidation. Rod consolidation involves dismantling or cutting apart the fuel assembly and putting the individual fuel rods closer together. Storage of only the fuel rods, without the spacers, end caps and other hardware, can increase storage capacity by 60 to 100 percent compared to storage of non-disassembled fuel. Rod consolidation - in conjunction with reracking - has been requested for only one plant - Maine Yankee. The staff's review of this application was completed a year ago, but the application is pending before an Atomic Safety and Licensing Board. We have approved 85 amendments involving spent fuel pool storage expansion and the rest are still being processed. A detailed table indicating the agency's experience to date with respect to spent fuel pool expansions is contained in the SAI report. As of now, every operating reactor except Big Rock Point has received approval for at least one reracking or had the closer spacing storage method approved with their initial license.

The technical review of requests to increase spent fuel pool storage capacity involves evaluating the physical and mechanical processes which may create potential hazards such as criticality considerations, seismic and mechanical loading, pool cooling, long term corrosion and oxidation of fuel cladding, and probabilities and consequences of various postulated accidents and failures of decayed spent fuel. Also, the neutron poison and rack structural materials must be shown to be compatible with the pool environment for a significant period of time due to the uncertainties as to how long the storage will actually be required on site. However, potential safety hazards associated with spent fuel pool expansions are not as large as those associated with reactor operation because the basic purpose of the expansion is to allow longer term storage of aged spent fuel. Since most plants are now on an 18 month refueling cyle and the NRC is processing a second expansion request application in many instances, the present expansion requests are to allow continued storage of spent fuel that has decayed over a decade along with the normal discharge of relatively new spent fuel for which the pool was originally designed. Typically a PWR will replace about one third of its core at each refueling and a typical BWR will replace about one fourth of its core at each refueling. After a year of storage, about 99% of the initial radioactivity has decayed.

(2) Technical judgement on the basis which a spent fuel pool expansion amendment may or may not pose a significant hazards consideration:

The technical evaluation of whether or not an increased spent fuel pool storage capacity involves potential hazards consideration is centered on the Commission's three standards in the interim final rule.

First, does increasing the spent fuel pool capacity significantly increase the probability or consequences of accidents previously evaluated? As discussed in the SAI report, reracking to allow closer spacing of fuel assemblies does not significantly increase the probability or consequences of accidents previously analyzed. However, the rod consolidation method may increase the probablity of a fuel drop accident by a factor of two because of the increase in the number of assembly lifts and involves handling of highly radioactive fuel assembly components. Double tiering of racks requires an increased frequency in lifting heavy loads over the spent fuel pool which would also increase the probability of an accident.

Second, does increasing the spent fuel storage capacity create the possibility of a new or different kind of accident from any accident previously analyzed? The staff, as well as SAI, have not identified any new categories or types of accidents as a result of reracking to allow closer spacing for the fuel assemblies. Double tiering and rod consolidation, however, do present new accident scenarios which may not be bounded by previous accident analysis for a given pool. In all reracking reviews completed to date, all credible accidents postulated have been found to be conservatively bounded by the valuations cited in the safety evaluation reports supporting each amendment.

Third, does increasing the spent fuel pool storage capacity significantly reduce a margin of safety? Neither the staff nor SAI have identified significant reductions in safety margins due to increasing the storage capacity of spent fuel pools. The expansion may result in a minor increase in pool temperatures by a few degrees, but this heat load increase is generally well within the design limitations of the installed cooling systems. In some cases it may be necessary to increase the heat removal capacity by relatively minor changes in the cooling system, i.e., by increasing a pump capacity. But in all cases, the temperature of the pool will remain below design values. The small increase in the total amount of fission products in the pool is not a signifcant factor in accident considerations. The increased storage capacity may result in an increase in the pool reactivity as measured by the neutron multiplication factor (Keff). However after extensive

study, the staff determined in 1976 that as long as the maximum neutron multiplication factor was less than or equal to 0.95, then any change in the pool reactivity would not significantly reduce a margin of safety regardless of the storage capacity of the pool. The technicques utilized to calculate Keff have been bench-marked against experimental data and are considered very reliable.

In the interim final rule, the Commission stated that it was not the intent to make a no significant hazards consideration finding based on unproven technology. Reracking to allow a closer spacing between fuel assemblies can be done by proven technologies. The double tiering method of expansion can also be done by proven technology. Rod consolidation, however, involves new technology and increased handling of highly radioacive components of fuel assemblies.

In summary, both rod consolidation and double tiering represent potential safety hazards considerations. Rod consolidation involves relatively new technology and double tiering may significantly increase the probability of accidents previously analyzed. Replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits (a subset of reracking) is considered not likely to involve significant hazards considerations if several conditions are met. First, no new technology or unproven technology is utilized in either the construction process or in the analytical techniques necessary to justify the expansion. Second, the Keff of the pool is maintained less than or equal to 0.95. A Keff of greater than 0.95 may be justifiable for a particular application but it would go beyond the presently accepted staff criteria and would potentially be a significant hazards consideration. Reracking to allow closer spacing or the placing of additional racks of the original design on the pool floor, which satisfies the two preceding criteria, would be similar to example (iii) on nuclear reactor core reloading under examples of amendments that are not considered likely to involve significant hazards considerations.

The staff concluded in its technical judgement that a request to expand the storage capacity of a spent fuel pool which satisfies the following is considered not likely to involve significant hazards considerations:

(1) The storage expansion method consists of either replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits,

(2) The storage expansion method does not involve rod consolidation or double tiering,

(3) The Keff of the pool is maintained less than or equal to 0.95, and

(4) No new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion.

This judgement was based on the staff's review of 96 applications and the result of the SAI study, which indicates that if a spent fuel pool expansion request satisfies the above criteria then it meets the three standards in the interim final rule in that it:

(1) Does not involve a significant increase in the probability or consquences of an accident previously evaluated; or

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Does not involve a significant reduction in a margin of safety.

Finally, the staff stated to the Commission that:

Applications which do not fall into the above category must be evaluated on a case-by-case basis. There are secondary issues which may be associated with a spent fuel pool expansion, but they must be considered on their own technical merit as a separate issue. As an example, transferring fuel to another site for storage or transferring fuel in a cask to another on-site spent fuel pool, if requested, must both be evaluated on a separate basis as to whether or not they involve significant hazards considerations.

The Commission has accepted its staff's judgment, discussed above, and reracking will be processed as indicated above.

E. Irreversible Consequences

Comments

One commenter notes that license amendments involving 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) require prior hearings so as not to foreclose the public's right to have its views considered. This commenter is especially concerned about the TMI-2 clean up and about the TMI-1 steam generator tube repairs. It argues that § 50.92(b) (which requires Commission "sensitivity" to this issue and which is buffered by the term "significant") contravenes Congress' intent.

Another commenter requests that a State and the public should have a say about any amendment request involving an environmental impact before NRC issues an amendment. It wants more from the Commission than the statement in the rule that the "Commission will be particularly sensitive" to such impacts.

Another commenter requests that the same argument that applies to "stretch power" situations should apply to situations which involve "irreversible consequences", such as increase in the amount of effluents or radiation emitted from a facility. It argues that, if the discharge

or emission level evaluated in the Safety Analysis Report, the Final Environmental Statement or generically by rulemaking (i.e., Part 50, Appendix I) would equal or exceed the proposed level of emissions, any permanent increase up to that level should not be considered likely to involve significant hazards considerations, and that any temporary increase within generally recognized radiation protection standards, such as those in 10 CFR Part 20, should be treated similarly. Moreover, it requests that these situations should be included as examples in the "not likely" category.

On the other hand, another commenter argues that license amendments involving temporary waiving of radiation release limitations (so that airborne radioactive waste can be released at a rate in excess of that which is allowed to be released -- as was an issue in the Sholly decision), should involve significant hazards considerations and, consequently, a prior hearing.

Response

The Commission disagrees with the comment that § 50.92(b) contravenes Congress' intent. That section is taken almost verbatim from the Conference Report (see Section I(C)(2)(c) in this preamble) and is entirely consistent with the colloquy of the Senators quoted in that section.

A State and the public can have a say about any amendment request that involves an environmental impact before NRC issues an amendment.

The procedures described before have been set up so that at the time of NRC's proposed determination (1) the State within which the facility is located is consulted, (2) the public can comment on the determination, and (3) an interested party can request a hearing. Section 50.92(b) simply buttresses the point that the Commission will be especially sensitive to the types of impacts described by the commenters which involve irreversible consequences.

The Commission has not accepted the last two commenters' suggestions. The legislation clearly specified that the Commission should be sensitive to the kinds of circumstances outlined by the commenters. The interim final rule repeats this language and thus insures that the Commission will evaluate each case with respect to its own intrinsic circumstances.

F. Emergency Situations

1.1 Comments

One commenter requests that the term "emergency" be deleted from the rule because it could be confused with a different use of this term in a final rule issued on April 1, 1983 (48 FR 13966) involving the applicability of license conditions and technical specifications in an emergency. See §§ 50.54(x) and 50.72(c). It suggests that the phrase "warranting expedited treatment" or some similar phrase could be used instead of the term "emergency."

Two other commenters request that § 50.91(a)(5) (involving emergency situations) be clarified to make clear that an emergency situation can exist whenever it is necessary that a plant not in operation return to operation or that a derated plant operate at a higher level of power generation. One of the commenters argues that unnecessary economic injury or impact on a generating system should also be classified as an emergency situation. It recommends that § 50.91(a)(5) be amended by inserting, after the words "derating or shutdown of the nuclear power plant" the words "including any prevention of either resumption of operation or increase in power output." The other commenter concurs with these words and would add the words "up to its licensed power level" after "power output."

Another commenter suggests that an emergency situation should also exist where a shutdown plant could be prevented from starting up because the Commission had failed to act in a timely way.

Several commenters agree with these comments, arguing that emergency situations should (1) be broadly defined, (2) be available when a plant is shutdown and cannot startup without a license amendment, and (3) include situations where an amendment is needed (as is the case with exigent circumstances) to improve public health and safety.

Response

The Commission understands that the term emergency is used in different ways in various sections of its regulations. However, the legislation and its legislative history, quoted above in Section I(A),

are very clear on the use of that term and specifically do use that term; consequently, the term must be used as a touchstone for the Commission's regulations.

The Commission disagrees with the commenters about broadening the definition of "emergency situations." The Conference Report quoted above specifically stated that:

> [T]he conferees understand the term "emergency situations" to encompass only those rare cases in which immediate action is necessary to prevent the shutdown or derating of an operating commercial reactor. (Emphasis added.)

The Conference Report is clear in its terms. It does not mention shutdown plants, higher levels of power generation, economic injury and the like. Nothing in the legislative history indicates that the Commission should take these factors into consideration. To the contrary: the conferees wanted to limit "emergency situations" to two circumstances involving operating reactors. The Commission has limited the term accordingly.

1.2 Comment

One commenter requests that the rule specify what is meant by a "timely application" in § 50.91(a)(5). That paragraph states that licensees should apply for license amendments in a "timely fashion" and that the Commission will decline to dispense with notice and comment procedures, "if it determines that the licensee has failed to

make a timely application for the amendment in order to create the emergency and to take advantage of the emergency provision."

Response

The provision cited by the commenter is clear enough. It is extracted almost verbatim from the Conference Report mentioned above. In it the conferees indicated that they wanted to ensure that a "licensee should not be able to take advantage of an emergency itself" and that, therefore, the Commission's regulations "should insure that the emergency situation" exception under section 12 of the conference agreement "will not apply if the licensee has failed to apply for the license amendment in a timely fashion."

The Conference Report also explains that:

> To prevent abuses of this provision, the conferees expect the Commission to independently assess the licensee's reasons for failure to file an application sufficiently in advance of the threatened closure or derating of the facility.

1.3 Comment

One commenter requests that NRC explain how it will process an amendment request that involves both an emergency situation and a significant hazards consideration. It suggests that, in this unlikely case, the Commission might issue an immediately effective order under 10 C.F.R. 2.204.

Response

In the unlikely situation noted by the commenter, as required by the legislation, the Commission will provide notice of an opportunity for a prior hearing. It will expedite this notice to the best of its ability. However, these procedures apply only to applications for amendments to operating licenses and do not affect the Commission's authority to issue orders or rules. If there is an imminent danger to health or safety, it can issue, of course, an immediately effective order or a rule as explained before. A new § 50.91(a)(7) has been added to clarify this point.

G. Exigent Circumstances

1.1 Comments

One commenter suggests that the two examples of exigent circumstances are unnecessarily narrow because both involve potentially lost opportunities to implement improvements in safety during a plant outage. The commenter recommends that the Commission make clear that these examples were not meant to be limiting and that exigent circumstances can occur whenever a proposed amendment involves no significant hazards consideration and the licensee can demonstrate that avoiding delay in issuance will provide a significant safety, environmental, reliability, economic or other benefit.

Another commenter requests that exigent circumstances include situations (1) where a licensee's plant is shutdown and the licensee

needs an amendment to startup and (2) involving significant hazards considerations. The commenter argues that both such situations entail delay and a significant financial burden on licensees.

Response

The examples were meant merely as guidance and were indeed meant to cover circumstances where a net safety benefit might be lost if an amendment were not issued in a timely manner. It is clear from the legislative history that exigent circumstances were not meant to cover economic benefits or costs.

1.2 Comments

One commenter states that the public notice procedures for exigent circumstances should be no different from those for emergency situations.

Two commenters oppose the use of press releases or display advertising in local media, arguing that such notices would unnecessarily elevate the importance of amendment requests.

Another commenter recommends that, if NRC believes that it must issue a press release, it should consult with the licensee on a proposed release before it acts. It also requests that NRC inform the licensee of the State's and the public's comments and that it promptly forward to the licensee copies of all correspondence.

Two commenters also oppose the toll-free "hot-line" in exigent circumstances, arguing that the concept implies imminent danger or

severe safety concerns which normally will not be present. One of these commenters requests, instead, the use of mailgrams or overnight express. It also recommends, if a hot-line system is implemented, that the system should be confined to extraordinary amendments involving unique circumstances. To ensure the accuracy of transcription of the comments received, it suggests that the comments should be recorded and retained to ensure that a verbatim transcript could be produced if needed. The other commenter requests that copies of the recorded comments should be sent to the licensee.

Another commenter suggests that the rule specify the geographical area to be covered by a notice to the media.

Response

In emergency situations NRC does not have time to issue a notice. In exigent circumstances, the Commission has to act swiftly but has time to issue a notice; in most instances it will be a FEDERAL REGISTER notice requesting public comment within less than 30 days, but not less than two weeks. The Commission, of course, needs the cooperation of a licensee to make the system work and to act quickly. If NRC is put in a situation where it cannot issue a FEDERAL REGISTER notice for at least two weeks public comment, then it will issue a media notice. It will consult with the licensee on a proposed release and the geographical area of its coverage and will inform it of the State's and the public's comments. If a system of mailgrams or overnight express is

workable, it will use that as opposed to a hotline; however, it will not rule out the use of a hotline. And if it does use a hotline, it may tape the conversations and prepare a transcript, as necessary.

1.3 Comment

One commenter notes that exigent circumstances can arise after the publication of a Commission notice offering a normal public comment period on a proposed determination. It requests that in these circumstances the rule should make clear that an expedited schedule would be established for receiving public comments and issuing the amendment.

Response

The Commission agrees that emergencies and exigencies could arise during the normal comment period. If this were to occur, it will expedite, to the extent it can, the processing of the amendment request, if and only if the request and the exigency or emergency are connected. As explained above, the Commission may also, of course, issue an appropriate order under 10 C.F.R. Part 2, if there is an imminent danger to the public health or safety.

H. Retroactivity

Comments

One commenter requests (and another would agree) that § 2.105(a)(4)(i) -- which explains how NRC may make an amendment

immediately effective -- be clarified to make clear that NRC will not provide notices of proposed action on amendment requests it received before May 6, 1983 (the effective date of the rule) that do not involve significant hazards considerations. It suggests that the Commission should publish instead notices of issuance of amendments pursuant to § 2.106.

Another commenter suggests expedited treatment for amendment requests received before May 6, 1983, when these relate to refueling outages scheduled by licensees before that date.

Response

The Commission will continue to notice any amendment request it received before May 6, 1983, as to which it makes a proposed determination after that date. Where necessary, it will expedite its internal processing of such an amendment request.

I. Notice and Consultation Procedures

1.1 Comments

One commenter proposes the following changes (endorsed by another commenter) to the notice procedures to shorten the comment period and to clarify the method of publication:

> Routine, minor amendments should be published in the monthly Federal Register compilation only and a ten-day comment period accorded. There should be no individual Federal Register notice in routine cases. An individual notice should be published in the Federal Register for requests that are not routine, such as for instance, steam generator modifications or reracking. These requests could also be published in the monthly compilation, but

the comment period should run from the date of the individual notice. As is the case for routine amendments, we propose a ten-day comment period. In exigent circumstances, which could encompass either routine or non-routine requests, we propose that notice be published individually in the Federal Register and that a reasonable comment period be accorded taking into account the facts of the particular case.

The commenter argues that expedited notice procedures would satisfy the statutory requirements, would eliminate a large source of delay, and would be recognized by the courts, since expedited procedures are the appropriate solution when notice and hearing are statutorily required but time is of the essence.

Two commenters are also concerned about the potential for delay in the new notice procedures. One of these requests that the rule indicate the normal time NRC needs to process routine and emergency applications.

Response

The Commission left itself the options in the interim final rule to publish individual or monthly FEDERAL REGISTER notices or a combination of both. Though it agrees that minor routine amendments could be published in its monthly notice and that non-routine amendments could be published in individual notices, it does not want to establish by rule any particular mode of publication.

The Commission does not agree that a 10-day comment period should be the norm. It believes that its system, which normally allows for 30-days public comment, is more in keeping with the intent of the

legislation, which provided for a reasonable opportunity for public comment, except in emergency situations where there is no time provided for public comment and in exigent circumstances where there is less than 30-days provided.

Section 50.91(a)(6) has been clarified to indicate that the comment period on any notice of course runs from the date of that notice. If there is an initial individual notice and a later monthly notice, the comment period begins with the first notice.

Finally, the Commission does not agree that it should prescribe its normal time for processing routine and emergency requests. Its staff will process all requests as quickly as it can. The Commission's staff has been directed to handle requests promptly and efficiently to insure that the staff is not the cause for a licensee's emergency or exigency request.

1.2 Comments

One commenter argues that the consultation procedures created by the interim final rule do not meet Congress' intent because they leave it up to a State to decide whether it wants to consult based on the licensee's amendment request and NRC's proposed determination. It seeks "formal, active consultation" (before NRC makes its proposed determination and publishes a FEDERAL REGISTER notice) through the "scheduling of formal discussions between the State and the NRC on the proposed determination, with the foregoing of such only upon written waiver of

the State." Additionally, it seeks incorporation of the State's comments in the FEDERAL REGISTER notice together with an explanation of how NRC resolved these. Finally, it requests that NRC always telephone State officials before issuing an amendment, rather than merely "attempting" to telephone them as, it states, the rule provides.

Another commenter is satisfied with the notice and consultation procedures, stating that "the regulations give the State no more authority in regulating the operation of the reactor then it had in the past, but they serve notice on the reactor operator that the State is an interested party in all nuclear operations within the State."

Response

The Commission believes that its State consultation procedures are well within Congress' intent. These procedures allow a State to take on as active a role as it wishes. If it wants to consult with NRC on every amendment request, it may do so. On the other hand, if it wants to conserve its resources and consult only on amendment requests it considers important, it may do that as well. The system of formal consultation envisaged by the first commenter is contrary to the intent of Congress, as discussed in Section III(B) below.

Finally, § 50.91(b)(3) of the interim final rule clearly states that before NRC issues the amendment, it will telephone the appointed State official in which the licensee's facility is located for the purpose of consultation. The Commission believes that this last step

is needed to ensure that the State indeed is aware of the amendment request and does not wish to be consulted about it. The rule has been changed in minor ways to clarify these points.

J. Notices in Emergency Situations or Exigent Circumstances

Comment

One commenter recommends that the Commission clarify that it intends to issue a post notice under § 2.106 rather than a prior notice under § 2.105 when it has determined that there is an emergency situation or exigent circumstances and that an amendment involves no significant hazards consideration. The commenter suggests that, in § 2.105(a)(4)(ii) the words "it will provide notice of opportunity for a hearing pursuant to § 2.106" should be deleted and the words "instead of publishing a notice of proposed action pursuant to this section, it will publish a notice of issuance pursuant to § 2.106" should be substituted.

Response

The Commission has not accepted the latter part of the commenter's request. In an emergency involving no significant hazards consideration, the Commission will publish a notice of issuance of the amendment under § 2.106. The licensee or any other person with the requisite interest may request a hearing pursuant to this notice. Thus, implicit in § 2.106 is the notion that a notice of issuance provides notice of opportunity

for a hearing. The words in § 2.105 make this notion explicit. Finally, contrary to the commenter's assertion, the Commission does provide prior rather than post notice in exigent circumstances.

K. Procedures to Reduce the Number of Amendments

Comment

One commenter suggests that many of the routine matters which require amendments should not be subject to the license amendment process. It argues that greater use should be made of § 50.59 (involving changes, tests and experiments without prior Commission approval, where these do not involve an unreviewed safety question or a technical specification incorporated in a license) for changes involving routine matters by not placing such changes into the technical specifications and thereby avoiding the need to issue license amendments. Two commenters also generally endorse the Commission's proposed rule (published on March 30, 1982 in 47 FR 13369) that would reduce the volume of technical specifications now part of an operating license, thereby reducing the need to request license amendments.

Response

The NRC staff is presently working on a final version of the proposed rule noted above. The proposed rule would introduce a two-tier system of license specifications: technical specifications and supplemental specifications. Only the former would be made directly

a part of the operating license and would require prior NRC approval and an amendment; supplemental specifications would be made a condition of the license, as is the Final Safety Analysis Report, but could be changed by the licensee within certain bounds and under prescribed conditions using a process similar to changes made under § 50.59.

L. License Fees

Comment

One commenter argues that licensees should not be assessed additional fees to finance activities involving determinations about no significant hazards considerations. It states that in a recent proposed rule (47 FR 52454, November 22, 1982) NRC proposed to amend the existing regulations governing payment of fees associated with, among other things, the processing of license amendment requests. The key element of the proposed changes relates to assessment of fees based upon actual NRC resources expended, rather than upon fixed fee for various classes of amendments. It goes on to note that, if the Part 170 changes are issued as proposed, after May 6, 1983--the effective date of the interim final rules--NRC resources expended as part of the notice and State consultation process would be financed by the requesting licensee. It states that licensees would not be the identifiable recipients of benefits resulting from this more involved process; as such, licensees should not be assessed fees for any expenses resulting from the public

notice, State consultation, and other consequential or follow-up activities which may result. And it argues that the legislative history behind Public Law 97-415 makes it clear that licensees are not the prime beneficiaries of this new license amendment process.

Response

The Commission believes that licensees do benefit from the two interim final rules. At a minimum, their license amendment requests will be granted normally before a hearing is held, if a final determination of no significant hazards consideration has been made and a hearing is requested. This clearly eliminates risk and delay. More importantly, the public's and the State's roles in the amendment process are clarified, which indirectly but identifiably benefits licensees.

M. Regionalization

Comment

One commenter recommends that, before NRC's headquarters transfers authority to the Regions to process "routine" amendments, a clear understanding be reached among the licensee, the Region and NRC's headquarters about the ground rules or what would constitute "routine" versus "complex" amendments and for the ways the amendments would be processed from the times they are requested, through notice and State consultation, to their grant or denial.

Response

The Commission agrees. For the time being, though, and perhaps in the future, NRC's headquarters will retain authority to process all amendment requests with respect to determinations about no significant hazards considerations. [There will be a reference to the Authorization Bill if it is passed before this is published.]

M. Exemption Requests

Comment

One commenter is concerned that NRC might automatically consider exemption requests as license amendments. It believes that exemption requests need not automatically be considered license amendments, even though NRC has occasionally elected to notice such requests in the FEDERAL REGISTER or has assigned license amendment numbers to the issuing documents.

Response

The Commission does not automatically consider exemption requests as license amendments. Most are not amendments. If they take on the character of amendments, though, they will be processed as such.

III. PRESENT PRACTICE, AND MODIFICATIONS UNDER THE FINAL RULE

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

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

With respect to opportunity for a hearing, the Commission amended § 2.105 to specify that it could normally issue in the FEDERAL REGISTER at least monthly a list of "notices of proposed actions" on requests for amendments to operating licenses. These monthly notices now provide an opportunity to request a hearing within thirty days. The Commission also retained the option of issuing individual notices, as it sees fit. If the Commission does not receive any request for a hearing on an amendment within the notice period, it takes the proposed action when it has completed its review and made the necessary findings. If it receives such a request, it acts under a new § 50.91, which describes the procedures and criteria the Commission would use to act on applications for amendments to operating licenses involving no significant hazards considerations.

To implement the main theme of the legislation, under new § 50.91 the Commission has combined a notice of opportunity for a hearing with a notice for public comment on any proposed determination on no significant hazards consideration. Additionally, new § 50.91 permits the Commission to make an amendment immediately effective in advance of the holding and completion of any required hearing where it has determined that no significant hazards consideration is involved. Thus, § 50.91 builds upon amended § 2.105, providing details for the system of FEDERAL REGISTER notices. For instance, exceptions are made for emergency situations, where no prior notices (for opportunity for a hearing and for public comment) might be issued, assuming no significant hazards considerations are involved. In sum, this system added a "notice for public comment" under § 50.91 to the former system of "notice of proposed action" under § 2.105 and "notice of issuance" under § 2.106.

Under this new system, the Commission requires an applicant requesting an amendment to its operating license (1) to provide its careful appraisal on the issue of significant hazards, using the standards in § 50.92 (and the examples, if applicable), and (2) if it involves the emergency or exigency provisions, to address the features on which the Commission must make its findings. (Both points will be discussed later.) The Commission wants a "reasoned analysis" from an applicant, and has made this clear in the final rule. An insufficient or sloppy appraisal will be returned to the applicant with a request to do a more careful analysis. Where an application has been returned for such reasons, the applicant cannot use the exigency or emergency provisions of the rule for any subsequent application for the same amendment.

When the Commission receives the amendment request, as described below, it first decides whether there is an emergency or an exigency. If there is no emergency, it then makes a preliminary decision, called a "proposed determination," about whether the amendment involves no significant hazards considerations -- normally, this is done before completion of the safety analysis (also called safety evaluation). In this determination, it might accept the applicant's appraisal in whole or in part or it might reject the applicant's appraisal but, nonetheless, reach the same conclusion. The Commission views the term "considerations" in the dictionary sense, that is, as a sorting of factors as to which it has to make a determination. In this sorting, the three standards are used as benchmarks and, if applicable, the examples may be used as guidelines.

Amendment requests that were received before May 6, 1983 (the effective date of the interim final rules) are processed in the same way, except that licensees have not been required to provide their appraisals.

At this stage, if the Commission decides that no significant hazards consideration is involved, it can issue an individual FEDERAL REGISTER notice or list this amendment in its monthly publication in the FEDERAL REGISTER. This monthly publication lists not only amendment requests received for which the Commission is publishir notice under § 2.105, it also provides a reasonable opportunity for public comment by listing this and all amendment requests received since the last such monthly notice, and,

like an individual notice, (a) providing a brief description of the amendment and of the facility involved, (b) noting the proposed no significant hazards consideration determination, (c) soliciting public comment on the determinations which have not been previously noticed, and (d) providing for a 30-day comment period. The final rule clarifies that, if an individual notice has been published, the monthly publication does not extend the deadline date for filing comments or providing an opportunity for a hearing.

Between May 6 and August 23rd*/ the Commission published FEDERAL REGISTER notices on determinations about no significant hazards considerations notices as follows:

	May	June	July	August	Total
New Notices	8	13	54	130	205
Repeat of Individual Notices	8	8	14	32	62
Emergencies or Exigencies			5	3	8
Issued			7	9	17

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*/ This will be updated by NRR before it is sent to the Commission [NRR please provide an update.]

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5/6/83 - 9/23/83	Monthly Notice Proposed Determination	Individual Notice Proposed Determination	Individual Notice Proposed Determination	Total
Number	234	78	2	314
Period for Public Comment				
30 days	234	73	2	309
Less than 30 days Short Notice		5		5
Press Release		2		2
Public Comments Received		7 (TMI)		7
Requests for Hearing		2 (TMI)		2
Final Determination Significant Hazards Considerations				0
Amendments Issued				35**
Routine				29**
Non-Routine				6

* NRR please update.

** Two amendments were issued before expiration of the 30-day comment period.

While it is awaiting public comment, the Commission proceeds with the safety analysis. In this context, the Commission explained in the interim final rules that, though the substance of the public comments could be litigated in a hearing, when one is held, neither it nor its Licensing Boards or Presiding Officers would entertain hearing requests on its substantive actions with respect to these comments. It noted that this is in keeping with the legislation which states that public comment cannot delay the effective date of an amendment. The Commission has instructed the staff to ensure that amendment requests are processed efficiently, and Licensing and Presiding officers Boards are authorized to determine whether the staff has adhered to the Commission's procedures.

After the public comment period, the Commission reviews the comments, if any, considers the safety analysis, and reaches its final decision on the amendment request. If it decides that no significant hazards consideration is involved, it publishes an individual "notice of issuance" under § 2.106 or it publishes the notice of issuance in its system of monthly FEDERAL REGISTER notices, and thus closes the public record. As the Commission explained with respect to the interim final rules, it does not make and publish a "final determination" on no significant hazards consideration, because such a determination is needed only if a hearing request is received and if it decides to make the amendment immediately effective and to provide a hearing after issuance rather than before. In this regard, the staff need not respond to comments if a hearing has not been requested.

If it receives a hearing request during the comment period and the Commission has decided that no significant hazards consideration is involved, it prepares

a "final determination" on that issue which considers the request and the public comments, makes the necessary safety and public health findings, and proceeds to issue the amendment. The hearing request is treated the same way as in previous Commission practice, that is, by providing any requisite hearing after the amendment has been issued. As explained before, the legislation permits the Commission to make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person (even one that meets the provisions for intervention in § 2.714), in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved. Any question about the staff's substantive determinations on the issue of significant versus no significant hazards consideration that may be raised in any hearing on the amendment does not stay the effective date of the amendment.

The procedures just described are the usual way of handling license amendments under the interim final rules because most of these amendments do not involve emergency or exigent situations and do not entail a determination that a significant hazards consideration is involved. As discussed below, these three situations and other unusual ones could arise though.

Returning to the initial receipt of an application, if the Commission were to receive an amendment request and then determine that a significant hazards consideration is involved, it would handle this request by issuing an individual notice of proposed action providing an opportunity for a prior hearing

under § 2.105, and, as appropriate, notifying the public of the final disposition of the amendment by noting its issuance or denial in the monthly FEDERAL REGISTER notice instead of in an individual notice. This case has not arisen. Even if the amendment request were to involve an emergency situation and if it were determined that a significant hazards consideration were involved, then the Commission would be required to issue a notice providing an opportunity for a prior hearing. If the Commission were to determine, however, that the public health or safety were in imminent danger, it could issue an appropriate order under 10 C.F.R. Part 2, as explained previously and as also discussed below.

Another unusual situation may arise: the Commission may receive an amendment request and find an emergency situation, where failure to act in a timely way would result in derating or shutdown of a nuclear power plant. In this case, also discussed later in connection with State consultation, it may proceed to issue the license amendment, if it determines, among other things, that no significant hazards consideration is involved. In this circumstance, the Commission might not necessarily be able to provide for prior notice for opportunity for a hearing or for prior notice for public comment and might therefore publish an individual notice of issuance under § 2.106 (which provides an opportunity for a hearing after the amendment is issued.) As noted in the chart above, xx*/ of these situations have occurred. Additionally, the Commission's monthly FEDERAL REGISTER notice system notes the Commission's action on the amendment request and, thereby, provides an opportunity for

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*/ NRR please update.

later public comment. The Commission stated with respect to the interim final rules, in connection with emergency requests, that it expects its licensees to apply for license amendments in a timely fashion. It explained that it will decline to dispense with notice and comment on the no significant hazards consideration determination, if it determines that the applicant has failed to make a timely application for the amendment in order to create the emergency and to take advantage of the emergency provision. Whenever a threatened closure or derating is involved, the Commission expects the applicant to explain to it why this emergency situation has occurred and why the applicant could not avoid it; the Commission will assess the applicant's reasons for failure to file an application sufficiently in advance of that event.

An emergency might also occur during the normal 30-day comment period. In this instance too the Commission might fashion an appropriate order under Part 2.

Another unusual situation might be that the Commission receives an amendment request and finds an exigency, that is, a situation other than an emergency where swift action is necessary. The legislation, quoted above, states that the Commission should establish criteria which "take into account the exigency of the need for the amendment." The Conference Report, quoted above, points out that "the conference agreement preserves for the Commission substantial flexibility to tailor the notice and comment procedures to the exigency of the need for the license amendment" and that "the conferees expect the

content, placement and timing of the notice to be reasonably calculated to allow residents of the area surrounding the facility an adequate opportunity to formulate and submit reasoned comments."

In the interim final rules, the Commission stated its belief that extraordinay situations may arise, short of an emergency, where a licensee and the Commission must act quickly and where time does not permit the Commission to publish a FEDERAL REGISTER notice soliciting public comment or to provide 30 days ordinarily allowed for public comment. It gave as examples two circumstances involving a net benefit to safety. One circumstance might occur when a licensee which, while shutdown for a short time, wishes to add some component clearly more reliable than one presently installed; and another circumstance might occur when the licensee wishes to use a different method of testing some system and that method is clearly better than one provided for in its technical specifications. In either case, the licensee may have to request an amendment, and, if the Commission determines, among other things, that no significant hazards consideration is involved, it may wish to grant the request before the licensee starts the plant up and the opportunity to improve the plant is lost.

The Commission noted in the interim final rules that in circumstances such as the two just described, it may use media other than the FEDERAL REGISTER, for example, a local newspaper published near the licensee's facility, widely read by the residents in the aréa surrounding the facility, to inform the public of

the licensee's amendment request. It stated that in these instances, the Commission will provide the public a reasonable opportunity to comment on the proposed no significant hazards determination. It also stated that, to ensure that the comments are received on time, it may also set up in such a situation a toll-free hotline, allowing the public to telephone their comments to NRC on the amendment request.

This method of prior notice for public comment is in addition to any individual notice of hearing that may be published; it does not affect the time available to exercise one's opportunity to request a hearing, though it may provide that opportunity only after the amendment has been issued, when the Commission has determined that no significant hazards consideration is involved. As noted in the chart above, xx of these situations have occurred.*/

The Commission has modified slightly the procedure discussed above. In emergency situations NRC does not have time to issue a notice. In exigent circumstances, the Commission has to act swiftly but has some time to issue a notice; in most instances it will be a FEDERAL REGISTER notice requesting public comment within less than 30 days, but no less than two weeks. The Commission, of course, needs the cooperation of a licensee to make the system work and to act quickly. If NRC is put in a situation where it cannot issue a FEDERAL REGISTER notice for at least two weeks public comment, then it will

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*/ NRR please update.

issue a media notice. It will consult with the licensee on a proposed release and the geographical area of its coverage and will inform it of the State's and the public's comments. If a system of mailgrams or overnight express is workable, it will use that as opposed to a hotline; however, it will not rule out the use of a hotline. If it does use a hotline, it may tape the conversations and may transcribe therse, as necessary, and may send them to licensees.

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

The Commission could also receive an amendment request with respect to which it finds that it is in the public interest to offer an opportunity for a prior hearing. In this case, it would use its present individual notice procedure to allow for hearing requests. Whether or not a hearing is held, it would notify the public about the final disposition of the amendment in a notice of issuance or denial in its monthly FEDERAL REGISTER notice.

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

The new system has changed only the Commission's noticing practices; it has not altered its hearing practices. The Commission explained in the two interim final rules that it has attempted to provide noticing procedures that are administratively simple, involve the least cost, do not entail undue delay, and allow a reasonable opportunity for public comment; nevertheless, it is clear that they are quite burdensome and involve significant resource impacts and timing delays for the Commission and for licensees requesting amendments. Licensees can reduce these delays under the procedures by providing to the Commission their timely and carefully-prepared appraisals on

the issue of significant hazards, and the staff can further reduce delay by processing requests expeditiously.

Finally, with respect to amendment requests received before May 6, 1983 (when the interim final rules became effective) on which the Commission had not acted by that date, the Commission has decided to continue to provide notice for public comment as it issues its proposed determinations.

B. State Consultation

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

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

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

> (1) Give the State a right to veto the proposed NRC determination;
> (2) Give the State a right to a hearing on the NRC determination before the amendment becomes effective;
> (3) Give the State the right to insist upon a postponement of the NRC determination or issuance of the amendment; or
> (4) Alter present provisions of law that reserve to the NRC exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.
>
> In requiring the NRC to exercise good faith in consulting with a State in determining whether a license amendment involves no significant hazards consideration, the conferees recognize that a very limited number of truly exceptional cases may arise when the NRC, despite its good faith efforts, cannot contact a responsible State official for purposes of prior consultation. Inability to consult with a responsible State official following good faith attempts should not prevent the NRC from making effective a license amendment involving no significant hazards consideration, if the NRC deems it necessary to avoid the shut-down or derating of a power plant. Conf. Rep. No. 97-884, 97th Cong., 2d Sess., at 39 (1982).

The law and its legislative history were quite specific. Accordingly, the Commission adopted the elements described in the Conference Report quoted above in those cases where it makes a proposed determination on no significant hazards consideration. The Commission has decided to retain this procedure. Normally, the State consultation procedures works as follows. To make the State consultation process simpler and speedier, under the interim final rules the Commission requires an applicant requesting an amendment to send a copy of its appraisal on the question of no significant hazards to the State in which the facility involved is located. (The NRC compiled a list of State officials who were designated to consult with it on amendment requests involving no significant hazards considerations; it made

this list available to all its licensees with facilities covered by § 50.21(b) or § 50.22 or with testing facilities.)

The Commission sends its FEDERAL REGISTER notice, or some other notice in the case of unusual exigent circumstances, containing its proposed determination to the State official designated to consult with it together with a request to that person to contact the Commission if there is any disagreement or concern about its proposed determination. The final rule clarifies that the notice to the State will be sent at the time it is sent for publication in the FEDERAL REGISTER. If it does not hear from the State in a timely manner, it considers that the State has no interest in its determination -- in this regard, the Commission made available to the designated State officials a list of its Project Managers and other personnel whom it has designated to consult with these officials. The final rule has been clarified to point out that, nevertheless, to insure that the State is aware of the amendment request and that it is really not interested, the Commission telephones the appropriate State official before it issues the amendment.

In an emergency situation, the Commission does its best to consult with the State before it makes a final determination about no significant hazards consideration before it issues an amendment.

Finally, in light of the legislative history, though the Commission gives careful consideration to the comments provided to it by the affected State on the question of no significant hazards consideration, the State comments are advisory to the Commission; the Commission remains responsible for making the final administrative decision on the question. The final rule has been clarified to make clear that a State cannot veto the Commission's proposed or final determination. Second, State consultation does not alter present provisions of law that reserve to the Commission exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

Paperwork Reduction Act Statement

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

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants and testing facilities. The companies that own these plants do not fall within the scope of the

definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. Since these companies are dominant in their service areas, this rule does not fall within the purview of the Act.

Regulatory Analysis

The Commission has prepared a Regulatory Analysis on these amendments, assessing the costs and benefits and resource impacts. It is contained in SECY-83-16B and 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 10 C.F.R. Parts 2 and 50 are published as a document subject to codification.

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

Part 2

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

Part 50

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

PART 2 -- RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

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

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

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955 as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239)

Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5.U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Sections 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended. (42 U.S.C. 2039). Appendix A also issued under sec. 6, Pub. L. 91-580, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.105, paragraphs (a)(4) [~~through-(a)(8)-are-redesignated-as paragraphs-(a)(5)-through-(a)(9),-a-new-paragraph-(a)(4)-is-added,~~ and ~~redesignated-paragraph~~](a)(6) are revised, as follows:*

§ 2.105 Notice of proposed action.

(a) * * *

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

(i) If the Commission determines under § 50.58 that the amendment involves no significant hazards consideration, though it will provide notice

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* Additions are underlined; deletions are in brackets and scored through.

of opportunity for a hearing pursuant to this section, it may make the amendment immediately effective and grant a hearing thereafter; or

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

* * * * *

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

* * * * *

PART 50 -- DOMESTIC LICENSING OF
PRODUCTION AND UTILIZATION FACILITIES

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

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

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

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

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

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

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

* * * * *

(b)(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

5. Section [A new §]50.91 is [added to Part 50] amended to read as follows:

§50.91 Notice for public comment; State consultation.

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

(a) Notice for public comment.

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

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

(3) The Commission may inform the public about the final disposition of an amendment request where it has made a proposed determination on no significant hazards consideration either by issuing an individual notice of issuance under § 2.106 or by publishing such a notice in its monthly

system of FEDERAL REGISTER notices. In either event, it will not make and publish a final determination on no significant hazards consideration, unless it receives a request for a hearing on that amendment request.

(4) Where the Commission makes a final determination that no significant hazards consideration is involved and that the amendment should be issued, the amendment will be effective upon issuance, even if adverse public comments have been received and even if an interested person meeting the provisions for intervention called for in § 2.714 has filed a request for a hearing. The Commission need hold any required hearing only after it issues an amendment, unless it determines that a significant hazards consideration is involved and emergency action is not warranted.

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

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

(6) Where the Commission finds that exigent circumstances exist, in that a licensee and the Commission must act quickly and that time does not permit the Commission to publish a FEDERAL REGISTER notice allowing 30 days for prior public comment, and it also determines that the amendment involves no significant hazards considerations, it will:

(i) Either issue a FEDERAL REGISTER notice or use local media as notice to provide an opportunity for a hearing and to allow two weeks from the date of the notice for prior public comment; [~~it will use local media to inform the public in the area surrounding a licensee's facility of the licensee's amendment and of its proposed determination as described in paragraph (a)(2) of this section;~~]

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

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

(iv) Provide a hearing after issuance, if one has been requested by a person with the requisite interest.

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

(7) Where the Commission finds that significant hazards considerations are involved, it will issue a FEDERAL REGISTER notice providing an opportunity for a prior hearing and for public comment. It will issue this notice even in an emergency situation, unless it finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 C.F.R. Part 2.

(b) State consultation.

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

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

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

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

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

(c) Caveats about State consultation.

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

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

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

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

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

6. Section [~~50.91 is redesignated as §~~] 50.92 [~~and revised~~] is amended 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~~] before 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 (1) pursuant to § 2.105 of this chapter before acting thereon and [~~The notice will be issued~~] (2) 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.

Dated at Washington, D.C. this _____ day of _____, 1984.

For the Nuclear Regulatory Commission,

_____
Samuel J. Chilk
Secretary for the Commission

RESPONSES TO COMMENTS

INDEX TO RESPONSES TO COMMENTS

LIST OF COMMENTERS AND DATES COMMENTS RECEIVED

Commenters	Overall Position on Rules
1. Ohio Citizens for Responsible Energy (OCRE) Susan L. Hiatte OCRE Representative 8275 Munson Rd. Mentor, OH 44060 May 5, 1981	Against
2. Lowenstein, Newman, Reis & Axelrad (Lowenstein) Maurice Axelrad 1025 Connecticut Ave., N.W. Washington, D.C. 20036 May 5, 1983	For
3. Union of Concerned Scientists (UCS) Ellen R. Weiss Lee L. Bishop Harmon & Weiss 1725 I Street, N.W. Suite 506 Washington, D.C. 20006 May 6, 1983	Against
4. Stone & Webster Engineering Corp. (S&W) R.B. Bradbury Chief Engineer, Licensing Division P.O. Box 2325 245 Summer St. Boston, Mass. 02107 May 6, 1983	For
5. Debevoise & Liberman (D&L) J. Michael McGarry Jeb C. Sanford 1200 Seventeenth St., N.W. Washington, D.C. 20036 May 9, 1983	For (if its recommendations about avoiding delays are accepted)
6. Houston Lighting & Power (HL&P) M.R. Wisenberg Manager, Nuclear Licensing P.O. Box 1700 Houston, Texas 77001 May 9, 1983	For

7.	Three Mile Island Alert, Inc. (TMIA) Joanne Doroshow 315 Peffer St. Harrisburg, Penn. 17102 May 9, 1983	Against
8	American Industrial Forum, Inc. (AIF) Barton Cowan 7101 Wisconsin Ave. Washington, D.C. 20014 May 9, 1983	For
9.	LeBoeuf, Lamb, Leiby & MacRae (LeBoeuf) 1333 New Hampshire Ave., N.W. Washington, D.C. 20036 May 9, 1983	For
10.	The Indiana Sassafras Audubon Society (ISAS) of Lawrence, Greene, Monroe, Brown, Morgan & Owen Counties Mrs. David G. Frey Energy Policy Committee, SAS 2625 S. Smith Rd. Bloomington, Indiana 47401 May 9, 1983	Against (because reracking is not included)
11.	Seacoast Anti-Pollution League (SAPL) Jane Doughty Field Director 5 Market St. Portsmouth, NH 03801 May 9, 1983	Against
12.	Baltimore Gas & Electric (BG&E) Manager Nuclear Power Dept. Charles Center P.O. Box 1475 Baltimore, MD 21208 May 9, 1983	For
13.	Edison Electric Institute (EEI) John J. Kearney Senior Vice President 1111 19th St., N.W. Washington, D.C. 20036 May 9, 1983	For

14.	State of Maine (Maine) (Comment on Standards) James E. Tierney Attorney General Philip Abrams Paul Stern Assistant Attorneys General State House Station 6 Augusta, Maine 04333 May 10, 1983	Against
15.	State of Maine (Maine) (Comment on State (Consultation) James E. Tierney Attorney General Philip Abrams Paul Stern Assistant Attorneys General State House Station 6 Augusta, Maine 04333 May 10, 1983	Against
16.	Yankee Atomic Electric Company (YAEC) Robert E. Helfrich Generic Licensing Activities 1671 Worcester Rd. Framingham, Mass. 01701 May 12, 1983	For (if §§ 50.59 and 50.36 were changed to provide for fewer amendment requests)
17.	Northeast Utilities (NU) W. G. Council Senior Vice President P.O. Box 270 Hartford, Conn. 06141-0270 May 16, 1983	For (because they are required by statute)
18.	Marvin I. Lewis (Lewis) 6504 Bradford Terr. Philadelphia, PA 19149 May 16, 1983	Against
18A.	Carolina Power & Light Co. (CP&L) Samantha F. Flynn Associate General Counsel Walter J. Hurford Manager, Technical Services P.O. Box 1551 Raleigh, North Carolina 27602 May 16, 1983	For

19. (Author Unclear) — Against
718-A Iredell
Durham, NC 27705
May 20, 1983

20. New York State Energy Office (NY) — For
William D. Cotter
Acting Commissioner
Rockefeller Plaza
Albany, N.Y. 12223
May 23, 1983

21.*/ Portland General Electric Company (PGE) — Against
Bart D. Withers
Vice President-Nuclear
121 S.W. Salmon St.
Portland, Oregon 97204
June 20, 1983

*/ Renumbered #22 by Docketing Section

RESPONSES TO COMMENTS

1. Clarity of Standards

1.1 Comments

Commenters 1 (OCRE), 3 (UCS) 7 (TMIA), 10 (ISAS), 11 (SAPL), 14 (Maine), and 19 (Author unclear) state that the three standards in § 50.92(c) are unclear and argue that the examples in the statement of considerations -- which they believe are clearer than the rule -- should be made part of the rule; otherwise, they argue, the examples have no legal significance.

Response

The Commission disagrees with the request. As explained before (see 48 FR 14864) in response to the comments on the proposed rule, the commenters correctly note that the examples have no binding legal significance. However, they do provide guidance to the staff, licensees and to the general public about the way the standards may be interpreted by the Commission. The Commission did consider combining the standards and examples as a single set of criteria in the interim final rule. It decided against it because (i) the standards and examples had proved useful over time, (ii) the staff had used all three standards and most of the examples well before they were published in rule form, and (iii) the approach had proved adequate. Upon reconsideration, the Commission has decided to retain them as they were set out in the interim final rule.

1.2 Comment

Commenter 18 (Lewis) believes that the interim final rule "unduly" and "improperly" limits freedom of speech and that minor changes in a plant can lead to severe health and safety consequences, such as an anticipated transient without scram (ATWS) as was the case in an incident with the Salem nuclear power plant.

Response

It is unclear how the interim final rule might limit freedom of speech. It is clear, though, that some changes to a plant involve a review of whether or not previously unevaluated accidents having severe consequences are posed by the amendment request. Before any amendment is issued, the Commission is required by the Atomic Energy Act (Act) to find that adequate protection is provided to protect the public health and safety. However, a determination that an amendment involves "no significant hazards considerations" includes a finding that the change does not involve a significant increase in previously evaluated accident probabilities or consequences, that it does not present a new type of accident not previously evaluated, and that it does not involve a decrease in safety margins. Thus, the concern raised by the comment is related only to amendments that involve significant hazards. Procedures governing these types of amendments are unaffected by this rule change. See, e.g. section 182a. of the Act.

1.3 Comment

Commenter 19 (Author unclear) suggests that the only standard that is needed is one that simply identifies those license amendments which make an accident possible.

Response

The standard suggested by the commenter is simple to state but impractical in practice. An amendment may involve a previously reviewed issue and not alter the conclusions reached concerning accident probabilities or consequences. In such a case, the amendment may involve a system or component that is significant to an evaluation of a design basis accident and still not involve a significant hazards consideration. This suggestion shifts the issue from "significant hazards considerations" to an issue concerning whether an amendment would contribute to an accident sequence. The three standards given in the interim final rule together with the examples are directed to the issue of significant hazards.

1.4 Comments

Commenter 5 (D&L) requests that only "credible accident scenarios" should be considered in evaluating amendment requests against the first two standards. It also suggests that, with respect to the third standard (significant reduction in safety margins), the Commission should initially determine how large the existing safety margin is before deciding whether a reduction is significant, because the extent of the existing margin is clearly relevant to the Commission's determination.

Commenter 17 (NU), on the other hand, argues that it is inappropriate to specify a percentage change above which the change becomes significant. It notes that when the safety margin is three orders of magnitude, a ten percent reduction is clearly not significant, and that when the safety margin is fifteen percent, a comparable percentage reduction may be significant. It also suggests that the cumulative effects of successive changes to one system must also be considered, and not merely the individual change which is being subjected to review at any given time.

Response

The first comment is similar to the original petition which proposed standards limited to "major credible reactor accidents." The Commission disagrees with it -- as it did previously -- because it allows too much room for argument about the meaning of "credible" in various accident scenarios and does not include accidents of a type different from those previously evaluated.

The Commission accepts the second commenter's views, as those are applicable to the second part of the first comment.

1.5 Comments

Commenter 16 (YAEC) points out that the three standards are virtually identical to the criteria in § 50.59 for determining whether unreviewed safety questions exist, and states that this similarity is appropriate.

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 under the two interim final rules 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

1.6 Comment

Commenter 20 (NY) generally agrees with the rule but believes that the word "significant" should be defined, if only to forestall court challenges by persons disagreeing with NRC. It suggests that NRC should create some sort of mechanism to resolve disputes between the staff, a State, or other parties, over whether or not an amendment request involves significant hazard considerations.

Response

The advantage of the notice provisions of this rule is that it provides an opportunity for comment on proposed determinations. Based on a particular proposal in an amendment request, the Commission welcomes any and all persons' comments about the "significance" of the proposed action. Aside from using examples as guidelines, it believes that the task of defining "significant" in the abstract is sisyphean. If disputes arise, the best way of resolving them would be under its rules of practice in 10 CFR Part 2.

2. Clarity of Examples

2.1 Comments on examples in the "likely" category

Commenter 3 (UCS) and 14 (Maine) state, with respect to the category of examples likely to involve significant hazards considerations, that (1) examples (i) and (ii) are incomprehensible; (2) example (iii) should be modified to read as follows:

> A significant [change (preferred by UCS) or alteration (preferred by Maine)] in limiting conditions for operation (such as allowing a plant to operate at full power when one or more safety systems are not operable).

(They request this modification (a) to substitute either the word "change" or the word "alteration" for "relaxation" in order to clarify that an opportunity for a hearing should be available in cases where there is a legitimate question about the sufficiency of an improvement in safety and (b) to delete the reference to "accompanying changes, conditions, or actions" which they consider irrelevant until the actual hearing.), and that (3) the examples on reracking and increase in radioactive emissions appearing in a staff paper (SECY-83-16A, Enc. 3A at pp. 25-26) and deleted from the interim final rule should be restored.

Commenter 13 (EEI) requests additional, clearer examples and commenters 3 (UCS) and 19 (Author unclear) provide the following in the category of examples "likely to involve significant hazards considerations":

(a) Reduction in testing or quality assurance quality control, or monitoring surveillance requirements;

(b) Relaxation of a deadline for implementing a requirement related to safety;

(c) Any reduction in the degree of redundancy and/or diversity in systems important to safety.

Commenter 5 (D&L) requests, with respect to examples in the "likely" category, that, "where the maximum core power level which has been reviewed by the staff exceeds the power level actually authorized by the license, any increase in power level up to the level which was

reviewed" and which received a "favorable conclusion" by the staff "(subject only to confirmation or verification of some kind) should be considered not likely to involve significant hazard considerations, since that power level has already been reviewed." The commenter contrasts this to a situation where an amendment is sought to permit operation at a maximum core power level in excess of the design basis which was reviewed and approved.

Commenter 7 (TMIA) requests that steam generator tube repairs such as the one at TMI-1 should be treated as involving significant hazards considerations.

Commenter 14 (Main) believes that the examples do not necessarily meet with the standards and that this creates a gray area; it then argues that all borderline cases within this gray area should be placed in the "likely" category.

Commenter 16 (YEAC) argues that, contrary to example (vi) in the "likely" category not all changes to technical specifications are likely to involve significant hazards considerations. It cites, for example, changes to technical specifications associated with core refueling that consist of small numerical variations to fuel cycle-dependent parameters; these changes, it states, are routinely calculated, verified, and monitored using Commission-approved analytical methods and administrative procedures. As a separate but related matter, it also argues that § 50.59 should be amended to permit changes to technical specifications without the present requirements of prior approval plus amendment, when it can be demonstrated that such changes do not create any unreviewed safety question under the present criteria in § 50.59. The commenter's

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."

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 unnecessary disruption or delay in the operations of nuclear power plants by imposing regulatory burdens unrelated 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

parents or affiliates of existing co-owners, so long as there is no alteration of the lead licensee's control over construction or operations."

Commenter 12 (BG&E) states that example (vi) in the "not likely" category specifies a comparison of amendment requests vis-a-vis the Standard Review Plan (SRP) that may be overly restrictive on older plants. It suggests that any comparison be made to either original or current licensing bases rather than the SRP.

Response

[Same as above]

2.3 Comments on both sets of examples

Commenters 3 (UCS) and 19 (Author unclear) argue that the word "significant" in the examples should be defined so as not to leave "critical decisions to the unreviewable judgment of the staff."

Commenter 6 (HL&P) requests that the guidance embodied in both sets of examples should not only be referenced in the procedures of the office of Nuclear Reactor Regulation, but that it should also be formally transmitted to all licensees in the form of a generic letter, regulatory guide, or other such document.

Response

See responses to comments 1.6 and 2.1 above.

3. Classification of Decisions

Comments

Commenters 3 (UCS) and 14 (Maine) argue that the standards pose complex questions that "require a level of analysis that goes for beyond the initial sorting of issues that Congress authorized." They repeat an argument that commenter 3 had made, when the standards were published as a proposed rule, namely, that "the use of these standards cannot help but require the NRC staff to make an initial determination, well before the formal hearing (if any) is held, of the health and safety merits of the proposed license amendment." And they argue that Congress did not authorize NRC to make such a determination in advance of the hearing on the merits. (Commenter 7 (TMIA) agrees with this argument). In sum, these commenters would like to see standards that simply allow for the sorting of issues, rather than, as they argue, standards that allow the staff to determine issues which are "virtually the same" as those it determines when deciding whether or not to grant the license amendment.

In this same vein both commenters argue that the standards contravene Congress' intent in that the Commission does not avoid resolving "doubtful or borderline cases with a finding of no significant hazards consideration."

Response

The Commission disagrees with the commenters, and the previous discussions above on this point explain its reasoning. It should also be noted that one reason that determinations on significant hazards considerations are divided into "proposed determinations" and

"final determinations" is to help sort the issues initially. In this process of sorting, the Commission's staff is charged with assuring that doubtful or borderline cases do not end up with a finding of no significant hazards consideration. As explained above, the decision about whether to issue an amendment is based on a separate health and safety determination, not on a determination about significant hazards considerations.

4. Reracking

Comments

Commenters 1 (OCRE), 3 (UCS), 7 (TMIA), 10 (ISAS), 11 (SAPL), 14 (Maine), and 19 (Author unclear) state that reracking should be considered amendments that pose significant hazards considerations, in light of the Commission's past practice and the understanding of Congress that the practice would be continued.

The industry commenters 13 (EEI) and 16 (YAEC), for instance, agrees with the Commission's position, including the need for a staff report that would provide the basis for a technical judgment that an amendment request to expand a specific spent fuel pool may or may not pose a significant hazards consideration.

Response

In its decision to issue the two interim final rules, the Commission directed the staff to prepare a report which: (1) reviews the agency's experience to date with respect to spent fuel pool expansion reviews and

(2) provides a technical judgement on the basis for which a spent fuel pool expansion amendment may or may not pose a significant hazards consideration.

The staff contracted with Science Applications, Inc. (SAI) to perform an evaluation of whether increased storage of spent fuel could pose a significant hazards consideration in light of the guidance in the interim final rule. SAI provided a report entitled, "Review and Evaluation of Spent Fuel Pool Expansion Potential Hazards Considerations." The Report Number is SAI-84-221-WA Rev. 1, dated July 29, 1983. On the basis of that report, the staff informed the Commission of the results of its study and included the SAI report. The staff paper is SECY-83-337, dated August 15, 1983. (Both the report and the study are available as indicated above.)

The staff provided the following views to the Commission.

(1) NRC experience to date with respect to spent fuel pool expansion reviews:

As the Commission noted, the staff has been providing prior notice and opportunity for prior hearing on amendments involving expansion of spent fuel pool storage capactiy. The applications were prenoticed as a matter of discretion because of possible public interest. This was the basis cited for prenoticing these applications in statements to Congressional committees. Public comments or requests to intervene have been received on 24 of the 96 applications for amendments received to date to increase the storage capacity of onsite spent fuel pools. In most cases, the comments and requests to intervene have been resolved without actual hearings before an ASLB [Atomic Safety and Licensing Board].

Of the 96 applications, 31 have been a second or third application for the same pool(s). All of these applications have proposed reracking to increase the storage capacity - that is, replacing existing spent fuel storage racks with new racks that permit closer spacing of spent fuel assemblies. Two of the applications involved more than simply replacing the racks on the spent fuel pool floor. In one case, the capacity was increased by a method referred to as double-tiering. In this method, a rack is filled with aged spent fuel while sitting on the pool floor; once filled, the rack is raised and placed on top of another filled rack. Double-tiering was approved by the staff for Point Beach 1 and 2

by amendments issued on March 4, 1979. The other method that has been proposed to increase pool storage capacity is referred to as rod consolidation. Rod consolidation involves dismantling or cutting apart the fuel assembly and putting the individual fuel rods closer together. Storage of only the fuel rods, without the spacers, end caps and other hardware, can increase storage capacity by 60 to 100 percent compared to storage of non-disassembled fuel. Rod consolidation - in conjunction with reracking - has been requested for only one plant - Maine Yankee. The staff's review of this application was completed a year ago, but the application is pending before an Atomic Safety and Licensing Board. We have approved 35 amendments involving spent fuel pool storage expansion and the rest are still being processed. A detailed table indicating the agency's experience to date with respect to spent fuel pool expansions is contained in the SAI report. As of now, every operating reactor except Big Rock Point has received approval for at least one reracking or had the closer spacing storage method approved with their initial license.

The technical review of requests to increase spent fuel pool storage capacity involves evaluating the physical and mechanical processes which may create potential hazards such as criticality considerations, seismic and mechanical loading, pool cooling, long term corrosion and oxidation of fuel cladding, and probabilities and consequences of various postulated accidents and failures of decayed spent fuel. Also, the neutron poison and rack structural materials must be shown to be compatible with the pool environment for a significant period of time due to the uncertainties as to how long the storage will actually be required on site. However, potential safety hazards associated with spent fuel pool expansions are not as large as those associated with reactor operation because the basic purpose of the expansion is to allow longer term storage of aged spent fuel. Since most plants are now on an 18 month refueling cyle and the NRC is processing a second expansion request application in many instances, the present expansion requests are to allow continued storage of spent fuel that has decayed over a decade along with the normal discharge of relatively new spent fuel for which the pool was originally designed. Typically a PWR will replace about one third of its core at each refueling and a typical BWR will replace about one fourth of its core at each refueling. After a year of storage, about 99% of the initial radioactivity has decayed.

(2) Technical judgement on the basis which a spent fuel pool expansion amendment may or may not pose a significant hazards consideration:

The technical evaluation of whether or not an increased spent fuel pool storage capacity involves potential hazards consideration is centered on the Commission's three standards in the interim final rule.

First, does increasing the spent fuel pool capacity significantly increase the probability or consequences of accidents previously

evaluated? As discussed in the SAI report, reracking to allow closer spacing of fuel assemblies does not significantly increase the probability or consequences of accidents previously analyzed. However, the rod consolidation method may increase the probablity of a fuel drop accident by a factor of two because of the increase in the number of assembly lifts and involves handling of highly radioactive fuel assembly components. Double tiering of racks requires an increased frequency in lifting heavy loads over the spent fuel pool which would also increase the probability of an accident.

Second, does increasing the spent fuel storage capacity create the possibility of a new or different kind of accident from any accident previously analyzed? The staff, as well as SAI, have not identified any new categories or types of accidents as a result of reracking to allow closer spacing for the fuel assemblies. Double tiering and rod consolidation, however, do present new accident scenarios which may not be bounded by previous accident analysis for a given pool. In all reracking reviews completed to date, all credible accidents postulated have been found to be conservatively bounded by the valuations cited in the safety evaluation reports supporting each amendment.

Third, does increasing the spent fuel pool storage capacity significantly reduce a margin of safety? Neither the staff nor SAI have identified significant reductions in safety margins due to increasing the storage capacity of spent fuel pools. The expansion may result in a minor increase in pool temperatures by a few degrees, but this heat load increase is generally well within the design limitations of the installed cooling systems. In some cases it may be necessary to increase the heat removal capacity by relatively minor changes in the cooling system, i.e., by increasing a pump capacity. But in all cases, the temperature of the pool will remain below design values. The small increase in the total amount of fission products in the pool is not a signifcant factor in accident considerations. The increased storage capacity may result in an increase in the pool reactivity as measured by the neutron multiplication factor (Keff). However after extensive study, the staff determined in 1976 that as long as the maximum neutron multiplication factor was less than or equal to 0.95, then any change in the pool reactivity would not significantly reduce a margin of safety regardless of the storage capacity of the pool. The technicques utilized to calculate Keff have been bench-marked against experimental data and are considered very reliable.

In the interim final rule, the Commission stated that it was not the intent to make a no significant hazards consideration finding based on unproven technology. Reracking to allow a closer spacing between fuel assemblies can be done by proven technologies. The double tiering method of expansion can also be done by proven technology. Rod consolidation, however, involves new technology and increased handling of highly radioacive components of fuel assemblies.

> In summary, both rod consolidation and double tiering represent potential safety hazards considerations. Rod consolidation involves relatively new technology and double tiering may significantly increase the probability of accidents previously analyzed. Replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits (a subset of reracking) is considered not likely to involve significant hazards considerations if several conditions are met. First, no new technology or unproven technology is utilized in either the construction rpocess or in the analytical techniques necessary to justify the expansion. Second, the Keff of the pool is maintained less than or equal to 0.95. A Keff of greater than 0.95 may be justifiable for a particular application but it would go beyond the presently accepted staff criteria and would potentially be a significant hazards consideration. Reracking to allow closer spacing or the placing of additional racks of the original design on the pool floor, which satisfies the two preceding criteria, would be similar to example (iii) on nuclear reactor core reloading under examples of amendments that are not considered likely to involve significant hazards considerations.

The staff concluded in its technical judgement that a request to expand the storage capacity of a spent fuel pool which satisfies the following is considered not likely to involve significant hazards considerations:

> (1) The storage expansion method consists of either replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits,
>
> (2) The storage expansion method does not involve rod consolidation or double tiering,
>
> (3) The Keff of the pool is maintained less than or equal to 0.95, and
>
> (4) No new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion.

This judgement was based on the staff's review of 96 applications and the result of the SAI study, which indicates that if a spent fuel pool

expansion request satisfies the above criteria then it meets the three standards in the interim final rule in that it:

> (1) Does not involve a significant increase in the probability or consquences of an accident previously evaluated; or
>
> (2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated; or
>
> (3) Does not involve a significant reduction in a margin of safety.

Finally, the staff stated to the Commission that:

> Applications which do not fall into the above category must be evaluated on a case-by-case basis. There are secondary issues which may be associated with a spent fuel pool expansion, but they must be considered on their own technical merit as a separate issue. As an example, transferring fuel to another site for storage or transferring fuel in a cask to another onsite spent fuel pool, if requested, must both be evaluated on a separate basis as to whether or not they involve significant hazards considerations.

The Commission has accepted its staff's judgment, discussed above, and rerackings will be processed as indicated above.

5. Irreversible Consequences

Comments

Commenter 7 (TMIA) notes that license amendments involving 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) require prior hearings so as not to foreclose the public's right to have its views considered. This commenter is especially concerned about the TMI-2 clean up and about the TMI-1 steam generator tube repairs. It argues that § 50.92(b) (which requires Commission

"sensitivity" to this issue and which is buffered by the term "significant") contravenes Congress' intent.

Commenter 20 (NY) requests that a State and the public should have a say about any amendment request involving an environmental impact before NRC issues an amendment. It wants more from the Commission than the statement in the rule that the "Commission will be particularly sensitive" to such impacts.

Commenter 5 (D&L) requests that the same argument that applies to "stretch power" situations should apply to situations which involve "irreversible consequences", such as increase in the amount of effluents or radiation emitted from a facility. It argues that, if the discharge or emission level evaluated in the Safety Analysis Report, the Final Environmental Statement or generically by rulemaking (i.e., Part 50, Appendix I) would equal or exceed the proposed level of emissions, any permanent increase up to that level should not be considered likely to involve significant hazards considerations, and that any temporary increase within generally recognized radiation protection standards, such as those in 10 CFR Part 20, should be treated similarly. Moreover, it requests that these situations should be included as examples in the "not likely" category.

On the other hand, commenter 7 (TMIA) argues that license amendments involving temporary waiving of radiation release limitations (so that airborne radioactive waste can be released at a rate in excess of that which is allowed to be released -- as was an issue in the Sholly decision), should involve significant hazards considerations and, consequently, a prior hearing.

> 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. S. Rep. No. 97-113, 97th Cong., 1st Sess., at 15 (1981).

The Commission agreed with the Committee "that reasonable persons may differ on whether a license amendment involves a significant hazards consideration" and it 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." 48 FR, at 14868. The Commission stated its belief that the standards coupled with the examples used as guidelines help draw as clear a distinction as practicable. It decided not to include the examples in the text of the interim final 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. Id.

In promulgating the interim final rule, the Commission also noted to licensees that, when they consider license amendments outside the examples, it may need additional time for its determination on no significant hazards considerations, and that they should factor this information into their schedules for developing and implementing such changes to facility design and operation. Id.

term in a final rule issued on April 1, 1983 (48 FR 13966) involving the applicability of license conditions and technical specifications in an emergency. See §§ 50.54(x) and 50.72(c). It suggests that the phrase "warranting expedited treatment" or some similar phrase could be used instead of the term "emergency."

Commenters 2 (Lowenstein) and 6 (HL&P) request that § 50.91(a)(5) (involving emergency situations) be clarified to make clear that an emergency situation can exist whenever it is necessary that a plant not in operation return to operation or that a derated plant operate at a higher level of power generation. Commenter 2 argues that unnecessary economic injury or impact on a generating system should also be classified as an emergency situation. It recommends that § 50.91(a)(5) be amended by inserting, after the words "derating or shutdown of the nuclear power plant" the words "including any prevention of either resumption of operation or increase in power output." Commenter 6 concurs with these words and would add the words "up to its licensed power level" after "power output."

Commenter 4 (S&W) suggests that an emergency situation should also exist where a shutdown plant could be prevented from starting up because the Commission had failed to act in a timely way.

Commenters 5 (D&L), 16 (YAEC) and 21 (PGE) agree with these comments, arguing that emergency situations should (1) be broadly defined, (2) be available when a plant is shutdown and cannot startup without a license amendment, and (3) include situations where an amendment is needed (as is the case with exigent circumstances) to improve public health and safety.

Response

The Commission understands that the term emergency is used in different ways in various sections of its regulations. However, the legislation and its legislative history are very clear on the use of that term and apecifically do use that term; consequently, the term must be used as a touchstone for the Commission's regulations.

The Commission disagrees with the commenters about broadening the definition of "emergency situations." The Conference Report specifically stated that:

> the conferees understand the term "emergency situations" to encompass only those rare cases in which immediate action is necessary to prevent the shutdown or derating of an operating commercial reactor. (Emphasis added.)

The Conference Report is clear in its terms. It does not mention shutdown plants, higher levels of power generation, economic injury and the like. Nothing in the legislative history indicates that the Commission should take these factors into consideration. To the contrary: the conferees wanted to limit "emergency situations" to two circumstances involving operating reactors. The Commission has limited the term accordingly.

6.2 Comment

Commenter 12 (BG&E) requests that the rule specify what is meant by a "timely application" in § 50.91(a)(5). That paragraph states that licensees should apply for license amendments in a "timely fashion" and that the Commission will decline to dispense with notice and comment

procedures, "if it determines that the licensee has failed to make a timely application for the amendment in order to create the emergency and to take advantage of the emergency provision."

Response

The provision cited by the commenter is clear enough. It is extracted almost verbatim from the Conference Report mentioned above. In it the conferees indicated that they wanted to ensure that a "licensee should not be able to take advantage of an emergency itself" and that, therefore, the Commission's regulations "should insure that the emergency situation" exception under section 12 of the conference agreement "will not apply if the licensee has failed to apply for the license amendment in a timely fashion."

The Conference Report explains that:

> To prevent abuses of this provision, the conferees expect the Commission to independently assess the licensee's reasons for failure to file an application sufficiently in advance of the threatened closure of derating of the facility.

6.3 Comments

Commenter 17 requests that NRC explain how it will process an amendment request that involves both an emergency situation and a significant hazards consideration. It suggests that, in this unlikely case, the Commission might issue an immediately effective order under 10 C.F.R. 2.204.

Response

In the unlikely situation noted by the commenter, as required by the legislation, the Commission will provide notice of an opportunity for a prior hearing. It will expedite this notice to the best of its ability. However, these procedures apply only to applications for amendments to operating licenses and do not affect the Commission's authority to issue orders or rules. If there is an imminent danger to health or safety it can issue, of course, an immediately effective order or a rule. A new § 50.91(a)(7) has been added to clarify this point.

7. Exigent Circumstances

7.1 Comments

Commenter 2 (Lowenstein) suggests that the two examples of exigent circumstances are unnecessarily narrow because both involve potentially lost opportunities to implement improvements in safety during a plant outage The commenter recommends that the Commission make clear that these examples were not meant to be limiting and that exigent circumstances can occur whenever a proposed amendment involves no significant hazards consideration and the licensee can demonstrate that avoiding delay in issuance will provide a significant safety, environmental, reliability, economic or other benefit.

Commenter 12 (BG&E) requests that exigent circumstances include situations (1) where a licensee's plant is shutdown and the licensee needs an amendment to startup and (2) involving significant hazards considerations. The commenter argues that both such situations entail delay and a significant financial burden on licensees.

Response

The examples were meant merely as guidance and were indeed meant to cover circumstances where a net safety benefit might be lost if an amendment were not issued in a timely manner. It is clear from the legislative history that exigent circumstances were not meant to cover economic benefits or costs.

7.2 Comments

Commenter 4 (S&W) states that the public notice procedures for exigent circumstances should be no different from those for emergency situations.

Commenters 5 (D&L) and 17 (NU) oppose the use of press releases or display advertising in local media, arguing that such notices would unnecessarily elevate the importance of amendment requests.

Commenter 17 (NU) recommends that, if NRC believes that it must issue a press release, it consult with the licensee on a proposed release before it acts. It also requests that NRC inform the licensee of the State's and the public's comments and that it promptly forward to the licensee copies of all correspondence.

Commenter 5 (D&L) and 17 (NU) also oppose the toll-free "hot-line" in exigent circumstances, arguing that the concept implies imminent danger or severe safety concerns which normally will not be present. Commenter 5 requests, instead, the use of mailgrams or overnight express. It also recommends, if a hot-line system is implemented, that the system should be confined to extraordinary amendments involving unique circumstances. To ensure the accuracy of transcription of the comments received, commenter 5 suggests that the comments should be recorded and

retained to ensure that a verbatim transcript could be produced if needed. Commenter 17 requests that copies of the recorded comments should be sent to the licensee.

Commenter 12 (BG&E) suggests that the rule specify the geographical area to be covered by a notice to the media.

Response

In emergency situations NRC does not have time to issue a notice. In exigent circumstances, it has to act swiftly but has some time to issue a notice; in most instances it will be a FEDERAL REGISTER notice requesting public comment within less than 30 days, but not less than two weeks. The Commission, of course, needs the cooperation of a licensee to make the system work and to act quickly. If NRC is put in a situation where it cannot issue a FEDERAL REGISTER notice for at least two weeks public comment, then it will issue a media notice. It will consult with the licensee on a proposed release and the geographical area of its coverage and will inform it of the State's and the public's comments. If a system of mailgrams or overnight express is workable, it will use that as opposed to a hotline; however, it will not rule out the use of a hotline. If it does use a hotline, it may tape the conversations and prepare a transcript, as necessary.

7.3 Comment

Commenter 18A (CP&L) notes that exigent circumstances can arise after the publication of a Commission notice offering a normal public comment period on a proposed determination. It requests that in these

circumstances the rule should make clear that an expedited schedule would be established for receiving public comments and issuing the amendment.

Response

The Commission agrees that emergencies and exigencies could arise during the normal comment period. If this were to occure, it will expedite, to the extent it can, the processing of the amendment request, if and only if the request and the exigency or emergency are connected. As explained above, the Commission may also, of course, issue an appropriate order under 10 C.F.R. Part 2, if there is an imminent danger to the public health or safety.

8. Retroactivity

Comments

Commenters 2 (Lowenstein) requests (and Commenter 17 (NU) would agree) that § 2.105(a)(4)(i) -- which explains how NRC may make an amendment immediately effective -- be clarified to make clear that NRC will not provide notices of proposed action on amendment requests it received before May 6, 1983 (the effective date of the rule) that do not involve significant hazards considerations. Commenter 2 suggests that the Commission should publish instead notices of issuance of amendments pursuant to § 2.106.

Commenter 18A (CP&L) suggests expedited treatment for amendment requests received before May 6, 1983, when these relate to refueling outages scheduled by licensees before that date.

Response

The Commission will continue to notice any amendment request it received before May 6, 1983, as to which it makes a proposed determination after that date. Where necessary, it will expedite its internal processing of such an amendment request.

9. Notice and Consultation Procedures

9.1 Comments

Commenter 5 (D&L) proposes the following changes (endorsed by commenter 18A (CP&L)) to the notice procedures to shorten the comment period and to clarify the method of publication:

> Routine, minor amendments should be published in the monthly Federal Register compilation only and a ten-day comment period accorded. There should be no individual Federal Register notice in routine cases. An individual notice should be published in the Federal Register for requests that are not routine, such as for instance, steam generator modifications or reracking. These requests could also be published in the monthly compilation, but the comment period should run from the date of the individual notice. As is the case for routine amendments, we propose a ten-day comment period. In exigent circumstances, which could encompass either routine or non-routine requests, we propose that notice be published individually in the Federal Register and that a reasonable comment period be accorded taking into account the facts of the particular case.

The commenter argues that expedited notice procedures would satisfy the statutory requirements, would eliminate a large source of delay, and would be recognized by the courts, since expedited procedures are the appropriate solution when notice and hearing are statutorily required but time is of the essence.

Commenters 8 (AIF) and 12 (BG&E) are also concerned about the potential for delay in the new notice procedures. Commenter 12

requests that the rule indicate the normal time NRC needs to process routine and emergency applications.

Response

The Commission left itself the options in the interim final rule to publish individual or monthly FEDERAL REGISTER notices or a combination of both. Though it agrees that minor routine amendments could be published in its monthly notice and that non-routine amendments could be published in individual notices, it does not want to establish by rule any particular mode of publication.

The Commission does not agree that a 10-day comment period should be the norm. It believes that its system, which normally allows for 30-days public comment, is more in keeping with the intent of the legislation, which provided for a reasonable opportunity for public comment, except in emergency situations where there is no time provided for public comment and in exigent circumstances where there is less than 30-days provided.

Section 50.91(a)(6) has been clarified to indicate that the comment period on any notice of course runs from the date of that notice. If there is an initial individual notice and a later monthly notice, the comment period begins with the first notice.

Finally, the Commission does not agree that it should prescribe its normal time for processing routine and emergency requests. Its staff will process all requests as quickly as it can. The Commission's staff has been directed to handle amendment requests promptly and

efficiently to insure that the staff is not the cause for a licensee's emergency or exigency request.

9.2 Comments

Commenter 15 (Maine) argues that the consultation procedures created by the interim final rule do not meet Congress' intent because they leave it up to a State to decide whether it wants to consult based on the licensee's amendment request and NRC's proposed determination. It seeks "formal, active consultation" (before NRC makes its proposed determination and publishes a Federal Register notice) through the "scheduling of formal discussions between the State and the NRC on the proposed determination, with the foregoing of such only upon written waiver of the State." Additionally, it seeks incorporation of the State's comments in the Federal Register notice together with an explanation of how NRC resolved these. Finally, it requests that NRC always telephone State officials before issuing an amendment, rather than merely "attempting" to telephone them as, it states, the rule provides.

Commenter 20 (NY) is satisfied with the notice and consultation procedures, stating that "the regulations give the State no more authority in regulating the operation of the reactor then it had in the past, but they serve notice on the reactor operator that the State is an interested party in all nuclear operations within the State."

170 changes are issued as proposed, after May 6, 1983--the effective date of the interim final rule--NRC resources expended as part of the notice and State consultation process would be financed by the requesting licensee. It states that licensees would not be the "identifiable recipient of benefits" resulting from this more involved process; as such, licensees should not be assessed fees for any expenses resulting from the public notice, State consultation, and other consequential or follow-up activities which may result. And it argues that the legislative history behind Public Law 97-415 makes it clear that licensees are not the prime beneficiaries of this new license amendment process.

Response

The Commission believes that licensees do benefit from the two interim final rules. At a minimum, their license amendment requests will be granted normally before a hearing is held, if a final determination of no significant hazards consideration has been made and a hearing is requested. This clearly eliminates risk and delay. More importantly, the public's and the State's roles in the amendment process are clarified, which indirectly benefits licensees.

13. Regionalization

Comment

Commenter 17 (NU) recommends that, before NRC's headquarters transfers authority to the Regions to process "routine" amendments, a clear understanding be reached among the licensee, the Region and NRC's

headquarters about the ground rules for what would constitute "routine" versus "complex" amendments and for the ways the amendments would be processed from the times they are requested, through notice and State consultation, to their grant or denial.

Response

The Commission agrees. For the time being, though, and perhaps in the future, NRC's headquarters will retain authority to process all amendment requests with respect to determinations about no significant hazards considerations. [There will be a reference to the Authorization Bill if it is passed before this is published.]

14. Exemption Requests

Comment

Commenter 17 (NU) is concerned that NRC might automatically consider exemption requests as license amendments. It believes that exemption requests need not automatically be considered license amendments, even though NRC has occasionally elected to notice such requests in the Federal Register or has assigned license amendment numbers to the issuing documents.

Response

The Commission does not automatically consider exemption requests as license amendments. Most are not amendments. If they take on the character of amendments though, they will be processed as such.