AA61-2 PDR

original signed

December 12, 1985 SECY-85-209A

For: The Commissioners

From: William J. Dircks
Executive Legal Director

Subject: FINAL REGULATIONS ON NO SIGNIFICANT HAZARDS CONSIDERATION (THE "SHOLLY AMENDMENT")

Purpose: To obtain Commission approval of publication of final regulations on the Sholly Amendment providing for requested operating license amendments involving no significant hazards considerations before the conduct of any hearing.

Discussion: The Commission is very familiar with the Sholly Amendment, part of Public Law 97-415. (See SECY-79-660 (December 13, 1979); SECY-81-366 (June 9, 1981); SECY-81-366A (August 28, 1981); SECY-83-16 (January 13, 1983); SECY-83-16A (February 1, 1983); SECY-83-16B (March 4, 1983); and SECY-85-209 (June 11, 1985). The Sholly Amendment is in Enclosure 1B of SECY-83-16.) Among other things, the legislation authorized us to issue amendments to operating licenses involving no significant hazards considerations before the conduct of any hearing. It also directed us to promulgate, within 90 days of enactment, regulations which establish: (a) standards for determining whether any amendment to an operating license involves no significant hazards consideration; (b) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on such a determination; and (c) procedures for consultation on any such determination with the State in which the facility involved is located.

On March 30, 1983, the Commission approved two Federal Register notices, an interim final rule on standards and criteria and an interim final rule on notice and State consultation procedures. These two rules were published in the Federal Register on April 6, 1983 ((48 FR 14864) and 48 FR 14873)). Both solicited public comments and stated that the Commission would publish a final rule. The Commission has approved the first option in SECY-85-209, namely, keeping the present procedures

Contact: Thomas F. Dorian, OELD
492-8690

8512240073 XA

32 pp

and continuing to notice the staff's proposed determinations. The Federal Register notice for the final rule (Enclosure 1) is consistent with this option.

So that the full record of the Commission's actions is readily available and so that it will not get misinterpreted or lost, the notice combines the statements of consideration of the two interim final rules and is more detailed than usual. The first section of the notice sets out (A) the affected legislation, regulations and procedures (pp. 3-7), (B) the Court's Sholly decision and the subsequent legislation (pp. 8-13), and (C) the basis for the interim final rules, including the 1976 petition for rulemaking (p. 13), the 1980 proposed rule (pp. 13-16), the comments on the proposed rule (pp. 16-22), a preliminary discussion on reracking of spent fuel pools (pp. 22-24), a discussion of amendments involving irreversible consequences (pp. 24-27), and two lists of examples: one for those amendments considered likely to involve significant hazards considerations (pp. 27-28) and one for those considered not likely to involve significant hazards considerations (pp. 28-30).

The second section sets out the responses to the comments on the two interim final rules. (The comments are described in some detail in Enclosure 2.) The Commission should note several issues in this section. First, as to the comment that it should incorporate the examples into the rule (p.31), it has already considered and disposed of this matter. See SECY-83-16A (where the staff incorporated the examples into the rule) and SECY-83-16B (where the Commission decided not to incorporate the examples into the rule).

Second, the issue of repair or replacement of major components or systems important to safety (raised by some commenters) necessitated an addition to the list of examples. See pp. 37-39. Third, the issue of rerackings is discussed and an example is added to the list. See pp.40-46. Fourth, the issues of emergency situations and exigent circumstances are discussed and clarified. See pp. 49-57 and 62.

The third section of the notice describes the staff's present practices and modifications to these under the final rule. See p. 66 et seq. The Sholly statistics are presented at pp. 71-79. In this regard, it should be noted that the regulatory analysis contained in

SECY-83-16 and SECY-83-16B has been updated as discussed in connection with SECY-85-209. See p. 91. In conclusion, the Commission should note the legislative requirement for Sholly notices has placed an additional resource burden on the staff, and the benefits to the public of the legislation may not be commensurate with the cost. However, given the legislative requirement, the Sholly procedures are working adequately. Consequently, no major changes have been made to the rule. See pp. 94-106. These procedures, however, are made necessary because of the amendments Congress has adopted to Section 189 of the Atomic Energy Act of 1954 over the years. If the Commission wishes to suggest amendatory language to the Congress it might consider recommending the removal of the mandatory hearing requirement adopted in 1957. Such a change would then allow a simple notice requirement to be substituted for the complicated and convoluted language of the Sholly amendment which results in giving the public notice of the Commission's intent to dispense with 30 days notice. For example, Section 189 stated more simply without the archaic mandatory hearing requirement could be revised to read:

> "a(1) In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award, or royalties under sections 153, 157, 186 c., or 188, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall provide ~~hold a hearing after~~ thirty days' notice and publication once in the Federal Register, on each facility application under section 103 or 104 b. ~~for a construction permit for a facility,~~ and on any application under section 104 c. ~~for a construction permit~~ for a testing facility. ~~In cases where such a construction permit has been issued following the holding of such a hearing, the Commission may, in the absence of a request therefor by any person whose interest may be affected, issue an operating license or an amendment to a construction permit or an amendment to an operating license without a hearing, but upon thirty days' notice and publication of its intent to do so.~~ The Commission may dispense with such thirty days' notice and

publication in exigent or emergency situations with respect to any application for 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, provided that notice and publication once in the Federal Register is provided within thirty days of making such a determination.

"(2)(A) The Commission may issue and make immediately effective any amendment to a construction permit or 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/or 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) - delete

(C) - delete

Recommendations: That the Commission:

(a) Approve publication of the final rule in Enclosure 1 on the "Sholly Amendment."

(b) Note that:

1. The final rule will take effect 60 days after publication.

2. The previous Regulatory Analysis in SECY-83-16 and 16B is low by a factor of about three.

3. Enclosure 2 is a summary of the comments. The responses to the comments on the two interim final rules are found in Enclosure 1 at pp. 31 to 66. As explained in the statement of considerations, two examples have been added as

a result of the public comments and further staff study.

4. As requested by the Committee on Environment and Public Works of the Senate, the Commission has been transmitting to it a monthly report on the Commission's determinations on no significant hazards considerations. This has been accomplished by sending it a copy of the Federal Register notice (with exceptions made for emergencies) containing the determinations.

   Note in this regard that the staff has been making proposed determinations on no significant hazards considerations but has not normally been making final determinations absent a request for a hearing.

5. Under 10 CFR 51.22(c)(3) and 51.22(b), preparation of an environmental impact statement or an environmental assessment is not necessary, since the eligibility criteria for categorical exclusion are met.

6. Under 10 CFR 50.109 preparation of a backfit analysis is not necessary, since the rule is required by legislation (whether or not it meets the standard in § 50.109(a)(3)) since the final rule is a modification of two interim final rules promulgated before new § 50.109 became effective on October 21, 1985, and since the final rule is procedural and not within the definition of backfit in § 50.109(a)(1).

7. The reporting requirement in the final rule need not be cleared with the Office of Management and Budget under the Paperwork Reduction Act because OMB has already cleared the two interim final rules.

8. The rule contains the requisite Regulatory Flexibility Act certification.

9. Appropriate Congressional Committees will be informed of the rule after the Commission has acted. OPA believes that a public announcement is unnecessary.

10. All known interested persons, including the States involved, will receive by direct mail a copy of the notice of final rulemaking.

11. The General Counsel's office has reviewed the previous draft of the rule and generally agrees with it.

12. The Commission may wish to direct the staff to provide a proposed legislative package to amend Section 189 of the Atomic Energy Act, as amended along the lines outlined above.

Scheduling: If scheduled on the Commission agenda, it is recommended that this paper be considered at an open meeting. No specific circumstances are known to staff which would require Commission action by any particular date in the near term.

William J. Dircks
Executive Director for Operations

Enclosures:

1. Final rule on standards for no significant hazards consideration and on notice and State consultation.

2. Summary of public comments.

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Tuesday, January 7, 1986.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Tuesday, December 31, 1985, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

DISTRIBUTION:
Commissioners
OGC
OPE
OI
OCA
OIA
OPA
REGIONAL OFFICES
EDO
ELD
ACRS
ASLBP
ASLAP
SECY

ENCLOSURE 1

SUMMARY OF COMMENTS

ENCLOSURE 2

INDEX TO SUMMARY OF 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

SUMMARY OF 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.

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.

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.

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.

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.

Commenter 17 (NU) makes the same point as commenter 16 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).

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.

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 suggestion is related to the proposed rule which would divide technical specifications into two categories of license specifications: technical specifications and supplemental specifications. The former would require amendments; the latter would not require amendments, but could require prior approval in certain circumstances. (See 47 FR 13369, March 30, 1982).

2.2 Comments on examples in the "not likely" category

Commenter 5 (D&L) requests, with respect to examples in the "not likely" category, that (1) example (ii) be expanded to encompass "any

change in the facility or procedures which is plainly a move in a more conservative direction;" (2) example (iii) be clarified by expressly illustrating the "change" to which it refers "as including (though not limited to) routine adjustments in technical specifications necessitated by non-significant differences in physical characteristics of the fresh fuel from the previous fuel;" and that (3) [Commenters 9 (LeBoeuf) and 18A (CP&L) agree] example (viii) be expanded to include adjustments in ownership shares when there are "new co-owners which are subsidiaries, 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.

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.

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."

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.

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.

6. Emergency Situations

6.1 Comments

Commenter 17 (NU) 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."

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.

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."

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.

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.

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 circum-stances. 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.

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.

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.

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.

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."

10. Notices in Emergency Situations or Exigent Circumstances

Comment

Commenter 2 (Lowenstein) 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.

11. Procedures To Reduce the Number of Amendments

Comment

Commenter 5 (D&L) 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. Commenter 5 and Commenter 17 (NU) 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.

12. License Fees

Comment

Commenter 17 (NU) 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 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.

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.

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.

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