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PDR

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

March 9, 1977

MEMORANDUM FOR: DOR Assistant Directors
DOR Branch Chiefs
DOR Project Managers
DOR Licensing Assistants

FROM: Victor Stello, Director, Division of Operating Reactors

SUBJECT: DOR MEMORANDUM NO. 5: ISSUANCE OF OPERATING LICENSE
AMENDMENTS, INCLUDING REVISIONS TO APPENDIX A AND B
TECHNICAL SPECIFICATIONS

I. INTRODUCTION

This procedure contains guidance for issuing amendments to operating licenses, including revisions to technical specifications, of nuclear power plants and to research reactors. Operating licenses of nuclear power plants now may include technical specifications as two appendices to the license: Appendix A technical specifications relate to health and safety, and Appendix B technical specifications relate to environmental impact.

II. BACKGROUND

Based on 10 CFR 50.59:

1. Licensees may make changes in the facility or procedures and conduct tests or experiments not described in the safety analysis report without prior Commission approval unless such change, test or experiment involves a change in the technical specifications or an "unreviewed safety question."
2. A licensee who desires to make a change in the facility or procedures or to conduct tests or experiments which involve an "unreviewed safety question" or to make a change in the technical specifications must submit an application for an amendment to the license.
3. If the amendment involves a "significant hazards consideration", public notice and an opportunity for a hearing must be provided prior to Commission action on the application for amendment.

In addition, 10 CFR Part 51 sets forth NRC policy and procedures for implementing the requirements of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) in connection with the Commission's licensing and regulatory activities. Environmental impact statements are prepared and circulated prior to any

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March 9, 1977

major Commission action which significantly affects the quality of the human environment.

Other actions may or may not require preparation of an environmental impact statement, depending upon the circumstances. In determining whether an environmental impact statement should or should not be prepared for such action, the Commission is guided by 10 CFR 51.5 and by the Council on Environmental Quality Guidelines, 40 CFR 1500.6.*

If it is determined that an environmental impact statement need not be prepared, a negative declaration (ND) and environmental impact appraisal (EIA) will, unless otherwise determined by the Commission, be prepared. Guidance for making this determination and procedures to be followed are detailed in later sections of this procedure.

III. SIGNIFICANT HAZARDS CONSIDERATIONS

It is neither possible nor desirable to provide a rigid formula which can be used to determine whether a proposed license amendment involves a significant hazards consideration. In some cases the collective judgment of senior staff members will be required before a decision can be made. For purposes of guidance, however, a proposed amendment can generally be categorized as involving a significant hazards consideration if: (1) it involves a significant increase in the probability or consequences of an accident, (2) it involves a significant decrease in a safety margin. These criteria must be applied using as a base what has been considered by the Commission in previous licensing actions in that specific case.

In evaluating a proposed license amendment, the staff must make two determinations. The first is whether the change involves a significant hazards consideration. If it does, public notice and an opportunity for a hearing must be provided prior to Commission action. This applies to power, testing, research reactors and critical facilities. The second determination which the staff must make, of course, is whether the proposed amendment is acceptable and does not endanger the public health and safety.

The first determination will fall into one of three categories: (a) it clearly involves a significant hazards consideration and should be pre-noticed at the earliest practical date, (b) it clearly does not involve a significant hazards consideration, and need not

* Each PM should read the CEQ Guidelines; Federal Register, Vol. 38, No. 147-page 20550, August 1, 1973.

March 9, 1977

be noticed until after the amendment is issued, or (c) there is uncertainty and normally the determination regarding pre-noticing will be deferred until the safety evaluation has progressed sufficiently to enable such a determination. There are some cases where the timing of the amendment is critical and it might be most expedient to pre-notice at the earliest practical date even though it is not possible to make a determination on significant hazards considerations.

Examples of license amendments which are more likely than others to involve significant hazards considerations are listed in Enclosure 1. Types of license amendments which are not likely to involve significant hazards considerations are listed in Enclosure 2. For these types listed, the first determination should be made within a few days of receipt of the proposed changes as to whether or not to pre-notice immediately. As soon as this determination is made, the project manager should complete the determination form (Enclosure 3) and obtain the necessary concurrences. However a determination need not be prepared when both the Branch Chief and the Project Manager conclude that 1) the proposed amendment does not involve a significant hazards consideration and 2) processing the proposed amendment, including the SE and OELD review of the amendment package, will be completed sufficiently in advance of when the licensee indicates he will need the amendment. This is so that it could still be prenoticed in the event final review of the amendment package indicates that a significant hazards consideration is involved. This documents the staff intention regarding noticing of the proposed change.

IV. REVIEW PROCEDURES

A. Appendix A Type License Amendments - Power and Testing Reactors

All Appendix A type license amendments require the preparation of a safety evaluation (see format in Enclosure 4). The determination of acceptability of an Appendix A type license amendment involves an assessment of whether there is reasonable assurance that the facility can be operated in the manner proposed without endangering the health and safety of the public. This determination is made at the completion of the safety evaluation and is documented in the SE. The scope and length of such a safety evaluation will be dependent on the significance and complexity of the amendment.

In connection with any Appendix A type amendment, the provisions of Part 51 on environmental matters must be considered. The cognizant ORPM, in consultation with the EEB as appropriate, and OELD, will make an appropriate finding regarding the

March 9, 1977

necessary environmental determination. Guidance for determining proper action pursuant to Part 51 for Appendix A type license amendments is given in Enclosure 5. If an environmental statement or a negative declaration/EIA is appropriate, OR will prepare the document with assistance as needed from EEB and/or DSE.

The ORPM will indicate, when appropriate, in the description of the proposed amendment included in the form shown in Enclosure 3 whether the proposed license amendment (1) is a major action significantly affecting the quality of the human environment (refer to 10 CFR 51.5(a)(10)) or (2) could affect the types and quantities of effluents from the facility or change the authorized power level of the facility (refer to 10 CFR 51.5(b)(2)) or (3) authorizes the dismantling or decommissioning of nuclear power reactors or testing facilities (refer to 10 CFR 51.5(b)(7)). If the proposed amendment involves such matters, the ORPM will describe these changes to the extent possible. The ORPM will take the lead in developing a coordinated schedule for completion of the licensing action including environmental action required by Part 51, and the safety evaluation.

Our procedures usually have the Safety Evaluation and Environmental Impact Appraisal as separate documents. However at times it would be advantageous to prepare a joint SE and EIA.

Enclosure 21 presents the format that shall be used when the Project Manager determines it is appropriate and elects to have joint Safety Evaluation and Environmental Impact Appraisal. When the combined format is used the Project Manager should ensure that the Discussion and Introduction are adequate and acceptable for both a Safety Evaluation and an Environmental Impact Appraisal.

B. Appendix B Type License Amendments - Power and Testing Reactors

If an Environmental Impact Statement (EIS) is not required (refer to 51.5(a)), license amendments involving Appendix B technical specification changes will require the preparation of an environmental impact appraisal (EIA) and negative declaration (ND) conforming to the requirements of 10 CFR 51.7 (see format in Enclosures 6 and 7) or a finding that no negative declaration is required. Some types of Appendix B type license amendments (see Enclosure 8) are more likely than others to require the preparation of an environmental impact appraisal and a negative declaration (refer to 10 CFR 51.5(b)(2) and 51.5(b)(7)). Others

March 9, 1977

which do not require an EIS (listed in Enclosure 9) might not require the preparation of an environmental impact appraisal and a negative declaration. It is emphasized that Enclosure 8 is neither all-inclusive nor absolute. It is included for guidance only and often the collective judgment of senior staff members may be required before a decision as to the type of environmental evaluation that is required can be made. A determination must be made on the acceptability of the proposed Appendix B type amendment. This involves an assessment of whether there is reasonable assurance that the facility can be operated in the manner proposed without having a significant adverse effect on the environment. This determination is made at the completion of the environmental evaluation and the basis therefore is documented in an environmental impact appraisal conforming to 10 CFR 51.7 or in the letter (see Enclosure 10) or in the SE (Enclosure 4) transmitting the approved Appendix B type license amendment to the licensee. The scope of such an environmental impact appraisal will be dependent on the significance of the amendment but except for changes which are obviously trivial in their environmental effect there should be some explanation (in addition to the boiler plate legal findings) of the reasons why the proposed amendment is acceptable.

Normally a formal safety evaluation is not required for changes to environmental technical specifications. However, each change in environmental technical specifications requires the findings necessary to support statements (2) and (3) in the Conclusion of the Safety Evaluation (see Enclosure 4).

C. Amendments to Research Reactor Licenses

Proposed amendments to research reactor licenses, including those changing the technical specifications, are reviewed in the same manner as discussed above. Due to the nature of research reactors, license amendments for these facilities will rarely require preparation of an EIS. However, pursuant to Section 51.5(b)(1), CP's and OL's may or may not require an Environmental Impact Statement. CP's and OL's generally require an Environmental Impact Appraisal and Negative Declaration which concludes that no EIS is necessary. Some major considerations in determining if it is a major Federal action significantly affecting the quality of the human environment are reactor type, power level of the proposed facility and its location.

License amendments for research reactors do not require ND and EIA (10 CFR Part 51.5(d)(4)). The ORPM, in his review of any such amendments, should be prepared to include the appropriate

March 9, 1977

evaluation of any environmental impacts that may require Commission evaluation.

V. ISSUANCE PROCEDURES

Upon completion of the safety evaluation and/or preparation of an EIA and ND, a license amendment and transmittal letter are prepared (see format in Enclosure 11). Additional formats for other types of license amendments are shown in the LA Handbook. As discussed in Section III, if it is determined that there is a significant hazards consideration, or for other reasons, a notice of the proposed license amendment (see Enclosure 12) is published in the Federal Register ("pre-notice"). If the amendment does not involve a significant hazards consideration, public notice of the issuance of such an amendment is required for power and testing reactors, but this will be done after Commission action on the application ("post-notice"). This latter notice is prepared at the time the amendment is issued and is published as soon as practicable thereafter. No notice of issuance is required for a license amendment for a research reactor, unless the proposed action has been pre-noticed. If an EIS is required, notices of intent and availability must be issued pursuant to 10 CFR Part 51. The negative declaration, as discussed in Sections III.A and III.B, may be combined with the Notice of Issuance (see Enclosure 13) or issued separately, depending on the timing (see Enclosures 14 and 7).

VI. AUTHORITY FOR APPROVAL

A. Coordination with ELD

All license amendments must be submitted to ELD for review and concurrence. Material sent to ELD for concurrence will be returned with either concurrence indicated (suggestions regarding changes may be included) or reasons for nonconcurrence. Where expedited action on concurrence is required, the amendment should be sent directly to the Chief Hearing Counsel with a routing slip explaining the need for expedited action and a "Special Service" sticker (see Enclosure 15). Amendments so designated will be processed and returned within three working days. In all other situations, the amendment should be sent to the Office of the Executive Legal Director for concurrence within ten working days.

B. Signatures and Concurrences

License amendments involving a significant hazards consideration are signed by the OR Assistant Director unless there has been a hearing board decision. Amendments issued following a

March 9, 1977

hearing board decision may be signed by the Branch Chief, OR. License amendments which do not involve significant hazards considerations, orders, or major policy issues (such as transfer of ownerships) are signed by the ORBC. All notices and letters to licensees (except those letters confirming emergency authorizations), may be signed by the cognizant ORBC. Negative declarations are signed by the ORBC. The safety evaluation and/or environmental impact appraisal is originated by the PM and concurred in by the Branch Chief.

C. Coordination with IE

Until such time as rated power level (as defined in the facility technical specifications) is initially authorized in the license, all license amendments involving power increases for power reactors operating under partial-power licenses should be coordinated with IE. An Inspection and Enforcement supporting memorandum must be available for any amendment authorizing operation at increased power levels where there were previous uncompleted items that are relevant to the safety of operation at the higher power level.

D. Additional Actions

License amendments may warrant the following additional actions, depending on circumstances.

1. Antitrust - If the amendment results in a substantially different facility from that subject to the existing license, an antitrust review may be required. Any questions in this regard should be directed to Antitrust and Indemnity Group or the Chief Antitrust Counsel in ELD.
2. Indemnity - If the amendment results in a change in power level, change of facility location or name, a significant modification that involves issuance of a CP, or transfer of ownership, the licensee's indemnity agreement may be affected. Any questions in this regard should be directed to AIG or the Chief Regulation Counsel in ELD.
3. Office of Public Affairs - Representatives of the Office of Public Affairs should be informed of the pending issuance of amendments which increase or decrease the power level of a nuclear power reactor or where there has been extensive public interest. They should receive a copy of any notice of a proposed action. A press release may be appropriate.

March 9, 1977

VII. EMERGENCY AUTHORIZATION

At times a licensee may find that he is not in compliance with a particular specification and cannot attain literal compliance immediately. He may have a technically sound rationale as to why compliance with that specification is not necessary in the interest of safety or the environment in the existing circumstances and he may propose an alternative to accomplish the objective of the specification in question, pending either its change or compliance with it. If the proposed alternative cannot be given prompt approval, so that noncompliance with a specification has occurred or will occur, suspension of plant operation is generally indicated, particularly if the specification is a Limiting Condition for Operation (LOC).

Licensees should be strongly encouraged to only submit applications that permit staff review and evaluation in a normal fashion. However if the licensee truly has an emergency, he should contact the ORPM.

A complication in those situations that require prompt attention may be that it occurs at night or on a weekend when the personnel who would normally be involved in approving the proposed alternative may not be available. Power reactor licensees have been instructed to contact the PM or an Operating Reactors Duty Officer when the PM is not available. The individual receiving the oral or telecopied request (PM or ORDO) should obtain sufficient information and supporting facts from the licensee to determine whether or not there is a significant hazards consideration and whether or not the proposed change could endanger the health and safety of the public or has the potential for significantly adversely affecting the environment, and request the licensee to confirm the request and facts by a formal application for an amendment. If a determination based on the information provided cannot be made, authorization must be denied or postponed pending further evaluation. OELD does not participate in the emergency authorization procedure at this time.

After resolving the request with the ADOR, the PM or ORDO prepares a written evaluation and signs it. If the Assistant Director is not available, the matter will be referred upward in the OR chain-of-command until resolution is obtained. The ADOR may provide oral authorization to the licensee and indicate that the authorization will be confirmed in writing. Immediately upon granting oral authorization, the Chief, Field Support & Enforcement Branch, IE, should be notified. The AD then dispatches a TWX or telecopy as soon as possible which references the oral authorization and confirms it. The original signed TWX or telecopy is mailed to the licensee (see Enclosure 16).

March 9, 1977

If the situation occurs during after-duty hours the approving official should document the facts and the authority given (in handwritten form), telephone the TWX through Western Union,* and assure that copies of his handwritten notes are placed in the docket files and PDR the next working day. As soon as possible, the formal license amendment package, including the safety and/or environmental evaluation and Federal Register notice, should be processed and the usual concurrences obtained, including OELD. The effective date for the formal amendment is the date of the emergency authorization.

In making a significant hazards consideration determination under emergency authorization conditions, it is necessary to consider the time period for the requested change. A change that might involve significant hazards considerations over an extended period might not involve significant hazards considerations for the defined limited time period requested by the licensee. The time variable must be considered in such cases. Emergency authorization cannot be given if it is determined that the change involves a significant hazards consideration.

VIII. NRC INITIATED CHANGES

Amendments to a license are usually initiated by a request or proposal from a licensee. However, there may be situations wherein the staff must initiate a change. All such changes must be accomplished by either a license amendment pursuant to 10 CFR paragraph 50.91 or an "Order for Modification of License" pursuant to 10 CFR paragraphs 2.204 and 50.100. The approach selected to initiate the change should be based on the urgency of the needed change, the confidence that the details of the change and its effects are known.

Licensee proposed technical specifications should be requested when changes are needed or to establish new specifications based on general guidance such as found in Regulatory Guides. The staff should initiate this by a letter to the licensee, which identifies the needed changes, provides a basis or sample specifications, and requests the licensee to propose specifications that are tailored

* See Secretarial Handbook - Send through FTRC (632-7934, 632-7944, 632-3626) or through Western Union charging to home telephone.

March 9, 1977


to his facility and which meet the need identified in the letter. Enclosure 17 is a sample letter used to initiate technical specifications changes using this approach. The proposed change submitted by the licensee, if acceptable, will be processed following other sections of this procedure. An unacceptable proposal would require that a second letter be sent to the licensee. Enclosure 18 is a sample of such a letter which must reiterate our belief that the change is needed and also include specifications that we have prepared and plan to issue if the licensee does not inform us in writing within the period indicated that he does not agree with the course of action, and his reasons.

When changes to the technical specifications have some degree of urgency or are well defined, the staff should initiate the change by a letter to the licensee which identifies the needed change and provides the exact specifications we intend to issue, and the supporting safety evaluation. Enclosure 19 is a sample of such a letter. Note that the letter for this approach is very similar to the followup letter for the approach described above for less urgent changes. In either case, the exact technical specifications must be prepared by the staff, as well as the supporting safety evaluation. Agreement of the licensee must be obtained prior to issuing a license amendment pursuant to 10 CFR 50.90 and 50.91. Licensee agreement is assumed if he does not inform the staff in writing within the period specified that he does not agree with our proposed course of action. For a license amendment initiated in this manner that involve a significant hazards consideration, the Federal Register notice shall be published only after the period of time (generally 20 days) specified in the letter to the licensee has expired. An unacceptable response from the licensee requires either further communications with the licensee or issuance of an Order.

When a safety issue is believed to require immediate implementation, or the licensee will not agree to desired technical specifications, an "Order for Modification of License" should be prepared pursuant to 10 CFR 2.204 and 50.100. Procedures for preparing an Order are presented in the LA Handbook. Whenever possible, the Order should be for an amendment to the license (e.g., a new or a changed technical specification); it should not establish requirements or limitations on the licensee independent of the license. Therefore, the Order should have associated with it a license amendment number. Thirty

March 9, 1977

days is the usual period before the Order is made effective; however, the Order may be made effective immediately if justified by public health, and safety or interest. Enclosure 20 is a sample of a letter that transmits such an Order.


Victor Stello, Director
Division of Operating Reactors
Office of Nuclear Reactor Regulation

Enclosures:
Listed on next page

cc w/enclosures:
B. C. Rusche
E. G. Case
OR Technical Coordinators
H. Shapar, ELD
T. Englehardt, ELD
M. Grossman, ELD
F. Ingram, PA

Enclosures:

1. Examples of Appendix A Type License Amendments That Are Likely To Involve Significant Hazards Considerations And Should Be Pre-Noticed Prior To Safety Evaluation.
2. Examples Of License Amendments That Are Not Likely To Involve Significant Hazards Considerations And Should Not Be Pre-Noticed Prior To Safety Evaluation.
3. Determination Of Proposed Licensing Amendment.
4. Safety Evaluation By Office Of Nuclear Reactor Regulation.
5. Guidance For Determining Proper Action Pursuant To Part 51 For Technical Specifications Changes.
6. Environmental Impact Appraisal.
7. Negative Declaration Regarding Proposed Changes To The Technical Specifications.
8. Examples Of Appendix B Type License Amendments For Which Negative Declaration And Environmental Appraisal Are Required.
9. Examples Of Appendix B Type License Amendments That Are Not Likely To Require A Negative Declaration And Environmental Impact Appraisal.
10. Example Of Letter Evaluation In Lieu Of Negative Declaration And Environmental Impact Appraisal.
11. Amendment To Facility Operating License
12. Notice Of Proposed Issuance Of Amendment To Facility Operating License.
13. Notice Of Amendment To Facility Operating License And Negative Declaration.
14. Notice Of Issuance Of Amendment To Facility Operating License.

Enclosures: (Cont'd)

15. Sample Routing Slip For Special Service.
16. Sample Letter For TWX Or Telecopy Of Emergency Technical Specifications Changes.
17. Sample Letter To Initiate Licensee Proposed Technical Specifications Changes.
18. Sample Letter Reiterating Need For Changes.
19. Sample Letter Submitting Staff Initiated Changes.
20. Sample Letter Transmitting Order For Modification Of License.
21. Safety Evaluation And Environmental Impact Appraisal By The Office Of Nuclear Reactor Regulation.

EXAMPLES OF LICENSE AMENDMENTS
THAT ARE LIKELY TO INVOLVE SIGNIFICANT
HAZARDS CONSIDERATIONS AND SHOULD BE
PRE-NOTICED PRIOR TO SAFETY EVALUATION*

1. Increase in authorized maximum power level (not previously evaluated by staff).
2. Any relaxation of safety limits.
3. Any relaxation of limiting safety system settings.
4. Any amendment resulting from a Section 50.59 plant modification, test or experiment or Tech Spec changes that involves or results from an unreviewed safety question.
5. Any relaxation in limiting conditions for operation not accompanied by compensatory changes, conditions, or actions that maintain a commensurate level of safety, as demonstrated by a previous safety analysis.
6. Any plant modification or other change that involves a new and different kind of accident not included in the envelope of accidents considered previously.
7. An extension of the term of the license (license renewal)

* See Section III of this procedure for guidance in special circumstances.

EXAMPLES OF LICENSE AMENDMENTS
THAT ARE NOT LIKELY TO INVOLVE SIGNIFICANT
HAZARDS CONSIDERATIONS AND SHOULD
NOT BE PRE-NOTICED PRIOR TO SAFETY EVALUATION

1. Any change that is limited to Appendix B, Environmental Tech Specs.
2. Any purely administrative change to Tech Specs (e.g., any change to Admin. Controls Section or Definitions, or correction of an error, or a change in nomenclature).
3. Any change to Tech Specs resulting from a Section 50.59 change, test, or experiment that does not involve or result from an unreviewed safety question.
4. Any change proposed by licensee that constitutes an additional limitation, restriction, or control, not presently included in the Tech Specs, unless the change results from an unreviewed safety question.
5. Any changes resulting from a core reloading so long as no fuel assemblies significantly different from those used and analyzed for a previous core are involved, no changes are made to the bases for the Tech Specs, and the analytical methods used to demonstrate conformance with the bases are unchanged or are methods already found acceptable by the NRC.
6. Any increase in power level relieving an earlier restriction which was imposed because the plant construction was not yet completed satisfactorily.
7. Any change resulting from the application of a small refinement of a previously used calculational model or design method.