



AAG-2

PDR

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

August 16, 1982

MEMORANDUM FOR: Tom Dorian  
Office of the Executive Legal Director

FROM: Joseph T. Cawley, II  
Rules and Procedures Branch  
Division of Rules and Records  
Office of Administration

SUBJECT: DRR REVIEW OF THREE FEDERAL REGISTER NOTICES;  
10 CFR PARTS 2 AND 50

I have reviewed the three attached Federal Register notices and inserted required format revisions where necessary. The proposed rule concerning "... No Significant Hazards Considerations..." would amend § 50.91. Another proposed rule entitled, "Backfitting"(Jim Tourtellotte's rule), also would amend § 50.91. Since both rules are in the "proposed" stage, coordination between you and Jim Tourtellotte should eliminate any possibility of a problem developing at the "final" rule stage. However, in order to avoid confusing the public with the publication of two different proposed versions of § 50.91, you may wish to resolve this issue as soon as possible.

Please call me on extension 27086 if you have any questions.

Joseph T. Cawley, II  
Rules and Procedures Branch  
Division of Rules and Records  
Office of Administration

Attachments: As stated

cc: Jim Tourtellotte

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Standards for Determining Whether License Amendments

Involve No Significant Hazards Consideration

*(OFR requirement)*

*- In SUMMARY section:*

*Need to add one additional sentence to explain the consequences of the rule.*

AGENCY: Nuclear Regulatory Commission: (NRC).

ACTION: Final rule.

SUMMARY: As required by the NRC Authorization Act for Fiscal Years 1982 and 1983, NRC is amending its regulations to specify standards for determining whether amendments to operating licenses for certain facilities involve no significant hazards consideration.

EFFECTIVE DATE: [Effective date is 30 days following publication in the FEDERAL REGISTER]

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

On \_\_\_\_\_, Congress passed Public Law \_\_\_\_\_ to authorize fiscal year 1982 and 1983 appropriations for NRC, and for other purposes. Among other things, the legislation directs NRC to promulgate, within 90 days of enactment, regulations which establish (a) standards for determining whether an amendment to an operating license involves no significant hazards consideration, (b) criteria for providing or for dispensing with prior notice and opportunity for public comment on such a determination, and (c) procedures for consultation on such a determination with the State in which the facility of the licensee requesting the amendment is located.

Proposed regulations to specify standards for determining whether an amendment to operating licenses or construction permits for commercial power reactors (or certain other facilities licensed under §§ 50.21(b) and 50.22) involves no significant hazards consideration (item (a) above) were published for comment in the Federal Register by the Commission on March 28, 1980 (45 FR 20491). The Commission is now promulgating these proposed regulations in final form with respect to operating licenses. It does not intend to use these standards with respect to decisions about amendments to construction permits. Such decisions have been rare and should remain very few, if any, because the no significant hazards consideration rarely, if ever, applies to

construction permits. Since the proposed rule was published before the new legislation was enacted, the final rule takes account not only of the new legislation but also the public comments received on the proposed rule. In addition, affected prior legislation as well as Commission regulations and practice are discussed as background information.

Simultaneously with the promulgation of these final standards, the Commission, as required by the new legislation, is publishing a proposed rule which contains criteria for providing or for dispensing with prior notice and public comment on a determination as to whether an amendment to an operating license involves a no significant hazards consideration (item (b) above). Regulations are also proposed which specify procedures for consultation on such a determination with the State in which the facility of the licensee requesting the amendment is located (item (c) above). These proposed rules appear in this issue of the Federal Register as the second document in this separate part.

A. Affected Legislation and Regulations

Section 189a. of the Atomic Energy Act of 1954, as amended (the Act), 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.

The Commission's regulations implementing section 189a. with respect to no significant hazards consideration are contained in 10 CFR Parts 2 and 50, "Rules of Practice for Domestic Licensing Proceedings" and "Domestic Licensing of Production and Utilization Facilities," respectively. The regulations provide for prior notice of a "proposed action" on an application for an amendment when a determination is made that there is a significant hazards consideration and provide an opportunity for interested members of the public to request a hearing. See 10 C.F.R. 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 normally be issued until after any required hearing is completed.

In addition, § 50.58(b) provides for thirty-days' notice and opportunity for a hearing on an application for a construction permit or operating license for a production, utilization or testing facility, or for an amendment to a construction permit or operating license. A hearing after the notice is required only on an application for a construction permit or an operating license or for an amendment when requested by a person whose interest may be affected. The provision also provides that if the Commission determines that no significant hazards consideration is presented by an application for an amendment to a construction permit or

an operating license, it may dispense with the notice. Thus, a determination that a proposed license amendment does or does not present a "significant hazards consideration" significantly affects the public hearing and notice requirements. However, the regulations until now have not defined the term "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 10 C.F.R. 2.106(a). In such cases, interested members of the public who wished to object to the amendment and request a hearing could do so, but a request for hearing did not, by itself, suspend the effectiveness of the amendment.

#### 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 a license for a facility 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 publication in the Federal Register. At the request of the Commission and the Department of Justice, the Supreme Court agreed to review the Court of Appeal's interpretation of section 189a. of the Act.

The Court's 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, or the common defense and security so requires. See, Administrative Procedure Act, § 9(b), 5 U.S.C. § 558(c), section 161 of the Act, and 10 C.F.R. 2.202(f) and 2.204. Similarly, the Court did not alter existing law with regard to the Commission's pleading requirements, which are designed to enable the Commission to determine whether a person requesting a hearing is, in fact, an "interested person" within the meaning of section 189a. -- that is, whether the person has demonstrated standing and identified one or more issues to be litigated. See, BPI v. Atomic Energy Commission, 502 F.2d 424, 428 (D.C. Cir. 1974), where the Court stated that, "Under its procedural regulations it is not unreasonable for the Commission to require that the prospective intervenor first specify the basis for his request for a hearing."

However, NRC believed that legislation was needed to change the result reached by the Court in Sholly because of the implications of the requirement that NRC grant a requested hearing before it could issue a license amendment involving no significant hazards consideration. Since

most requested license amendments involve no significant hazards consideration and are routine in nature, hearings on such amendments could result in unnecessary disruption or delay in the operations of nuclear power plants and could impose unnecessary regulatory burdens upon NRC and the nuclear industry that are not related to significant safety matters. Subsequently, on March 11, 1981, the Commission submitted proposed legislation to Congress (introduced as S.912) that would expressly authorize NRC to issue a license amendment involving no significant hazards consideration before holding a hearing requested by an interested person.

After considering two similar bills, H.R.2330 and S.1207, Congress passed Public Law \_\_\_\_\_. Specifically, section 12 of that law amends section 189a. of the Act by adding the following with respect to license amendments involving no significant hazards consideration:

["SHOLLY"]

OPERATING LICENSE AMENDMENT HEARINGS

SEC. 12. (a) Section 189a. of the Atomic Energy Act of 1954 (42 U.S.C. 2239(a)) is amended--

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(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 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 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."

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

Thus, as noted above, the legislation authorizes NRC to issue and make immediately effective an amendment to an operating license upon a determination that the amendment involves no significant hazards consideration, even though NRC has before it a request for a hearing from an interested person. At the same time, however, the legislative history makes it clear that Congress expects NRC to exercise its authority only in the case of amendments not involving significant safety questions. See Senate Report No. 97-113, May 15, 1981, on S.1207, by the Senate Committee on Environment and Public Works, at p. 14. Additionally, Congress 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.  
Id.

It should be also noted that Section 12 of Public Law \_\_\_\_\_ separates the standards for determining whether an amendment involves no significant hazards consideration (now used with respect to prior noticing and opportunity for hearing) from the criteria for providing or for dispensing with prior notice and reasonable opportunity for public comment on this determination.

Therefore, the Commission is promulgating as a final rule the proposed standards for determining whether an amendment to an operating license involves no significant hazards consideration, and, simultaneously, it is publishing for thirty-days' comment (as mentioned before) a proposed rule to establish (a) criteria for providing or dispensing with prior notice and public comment on such a determination and (b) procedures for consulting the requisite State on such a determination.

C. Final Rule on Standards for Determining Whether an Amendment to an Operating License Involves No Significant Hazards Consideration

The Commission's final rule on standards for determining whether an amendment involves no significant hazards consideration completes its actions on the notice of proposed rulemaking (discussed above), which was issued in response to a petition for rulemaking (PRM 50-17) submitted by letter to the Secretary of the Commission on May 7, 1978, by Mr. Robert Lowenstein. The petitioner requested that 10 CFR Part 50

of the Commission's regulations be amended with respect to the procedures for issuance of amendments to operating licenses for production and utilization facilities.

The petitioner's proposed amendments to the regulations would have required that the staff take into consideration (in determining whether a proposed amendment to an operating license involves no significant hazards consideration) whether operation of the plant under the proposed license amendment would (1) substantially increase the probability or consequences of a major credible reactor accident or (2) decrease the margins of safety substantially below those previously evaluated for the plant and below those approved for existing licenses. Further, the petitioner proposed that, if the staff reaches a negative conclusion as to both of these standards, the proposed amendment must be considered not to involve a significant hazards consideration.

In issuing the proposed rule, the Commission sought to improve the licensing process by specifying in the regulations standards as to the meaning of "no significant hazards consideration." These standards would have applied to amendments to operating licenses, as requested by the petition for rulemaking, and also to construction permits, to whatever extent considered appropriate. As mentioned before, the Commission now believes that these standards are not applicable to amendments to construction permits and has modified the proposed rule accordingly.

In the statement of considerations which accompanied the proposed rule, the Commission explained that it did not agree with the petitioner's proposed standards because of the limitation to "major credible reactor accidents" and the failure to include accidents of a type different from those previously evaluated. During the past several years the Commission's staff has been guided in reaching its determinations with respect to "no significant hazards consideration" by staff standards and examples of amendments likely to involve, and not likely to involve, significant hazards considerations. These have proven useful to the staff, and the Commission employed them in developing the proposed rule. The notice of proposed rulemaking contained revised standards to be incorporated into Part 50, and the statement of considerations contained examples of amendments to a license that are considered likely and not likely to involve a significant hazards consideration. The three standards proposed 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.

Nine individuals submitted comments regarding the proposed amendments. The comments are part of the public record and may be examined at and copied for a fee at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. A summary of and response to the comments is available for examination and copying for a fee at the Public Document Room.

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 prenoticed. This comment was not accepted. Setting a threshold level for accident consequences could eliminate a group of amendments with respect to accidents which have not been previously evaluated or which, if previously evaluated, may turn out to have more severe consequences than previously evaluated.

It is possible, for example, that there may be a class of license amendments sought by a licensee which, while designed to improve or increase safety may, on balance, involve a significant hazards consideration because they result in operation of a reactor with a reduced safety margin due to other factors or problems (i.e., the net effect is a reduction in safety of some significance). Such amendments typically are also proposed by a licensee as an interim or final resolution of some significant safety issue that was not raised or resolved before issuance of the operating license -- and, based on an evaluation of the new safety issue, they may result in a reduction of a safety margin believed to have been clear and 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 has added to the list of examples a new example (vii) in the class of amendments considered likely to involve a significant hazards consideration.

In addition, the Senate Committee on Environment and Public Works commented upon the Commission's proposed rule before it reported S. 1207. It stated:

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

Accordingly, a new example (viii), fitting somewhat indirectly into the standards, has been added to the list of examples to make clear that spent fuel pool rerackings are specifically considered likely to involve a significant hazards consideration.

The Committee also stated that:

It expects that the Commission, to the extent practicable, will develop and promulgate standards that can be applied with ease and certainty. In addition, the determination of "no significant hazards consideration" should represent a judgment on the nature of the issues raised by the license amendment rather than a conclusion about the merits of those issues. Id.

This statement alluded to the point that the proposed rule contained criteria to determine whether an amendment requires prenotice

which were the same as the standards used to determine the merits of whether a requested amendment should be granted. In the same context, one commenter suggested that application of the criteria with respect to prenotice in many instances will necessarily require the resolution of substantial factual questions which largely overlap the issues which bear on the merits of the license amendment. The implication of the comment was that the Commission at the prenoticing 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. Also of concern was the point that the Commission, under the current regulations as well as under the proposed rule, could avoid notice entirely after making a determination of no significant hazards consideration.

In any event, the legislation has made these comments moot by separating the criteria used for public notice and comment on no significant hazards consideration determinations from the standards used to make a determination about no significant hazards consideration. Under the legislation, the Commission would not use the same criteria for notice and comment as it would for the standards on no significant hazards consideration determination. As fully described in the accompanying proposed rule on criteria for notice and comment, the Commission would periodically (but not less frequently than once every thirty days)

publish for comment in the Federal Register notice of any amendments issued or proposed to be issued; it would use the standards in § 50.92(b) to determine whether to issue a requested amendment and whether, under § 2.105, to issue notice of "proposed action" and, thereby, to provide opportunity for a hearing.

The Commission has left the proposed rule intact to the extent that the rule states standards with respect to the meaning of "no significant hazards consideration." The standards in the final rule are substantially identical to those in the proposed rule, though the attendant language has been revised to make the determination somewhat simpler, as well as easier to use and understand.

Based on comments received, the examples of amendments likely to involve, and not likely to involve, significant hazards considerations have been revised to ensure that determinations on significant hazards considerations do not prejudice the ultimate safety findings, i.e., that the no significant hazards consideration determinations are not identical to the conclusions in the final staff reviews with respect to the merits of the types of license amendments addressed by the examples. To supplement the standards that are being incorporated into the NRC regulations, the examples will be incorporated into procedures of the Office of Nuclear Reactor Regulation, a copy of which will be placed in the Commission's Public Document Room.



EXAMPLES OF AMENDMENTS THAT ARE CONSIDERED LIKELY TO INVOLVE SIGNIFICANT HAZARDS CONSIDERATIONS ARE LISTED BELOW. (A seventh and eighth example have been added, as previously discussed.)

(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.

(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 involving a significant unreviewed safety question.

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

(viii) Reracking of a spent fuel storage pool.

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

(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 satisfaction of the criteria are essentially self-evident.

(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 essentially self-evident whether construction has been completed satisfactorily.

(vi) A change which either increases the probability or consequences of a previously-analyzed accident or reduces a safety margin but for which the results of the change are clearly within regulatory acceptance criteria: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

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

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

#### Paperwork Reduction Act Statement

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

#### Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission 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. 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.

Insert on page 19 where indicated

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Part 2 - Rules of Practice

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

(Note: Place  
in sentence forms  
do not list)

Part 50 - Domestic Licensing of Production and Utilization Facilities

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

→ [Insert Thesaurus terms here (see opposite page)]

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that the following amendments to Title 10, Chapter I, Code of Federal Regulations 10 CFR Parts <sup>2 and</sup> 50, are published as a document subject to codification.

~~List of Subjects in 10 CFR Parts 2 and 50.~~

~~[John Philips to provide thesaurus terms]~~

PART 2--RULES OF PRACTICE FOR  
DOMESTIC LICENSING PROCEEDINGS

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

Authority: Secs. 161, 181, 68 Stat. 948, 953 (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-815, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended by Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841); 5 U.S.C. 552.  
(Section 2.101 also issued under secs. 53, 62, 81, 103, 104, 105, 68 Stat. 930, 932, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 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). Sections 2.200-2.206 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236); sec. 206, 88 Stat. 1248 (42 U.S.C. 5846). Sections 2.600-2.606, 2.730, 2.772 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (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. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133). Sections 2.800-2.807 also issued under 5 U.S.C. 553. Section 2.808 also issued under 5 U.S.C. 553 and sec. 102, 83 Stat. 853 (42 U.S.C. 4332). Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended by Pub. L. 95-209, 91 Stat. 1483 (42 U.S.C. 2039). Appendix A is also issued under sec. 8, Pub. L. 91-560, 84 Stat. 1472 (42 U.S.C. 2135))

~~[John Ph~~

erence]

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

§ 2.105 Notice of proposed action.

(a) \* \*\*

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

\* \* \* \* \*

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

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

\* \* \* \* \*

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<sup>1/</sup> Additions to the currently effective regulation are underscored and deletions are within brackets. Before publication in the Federal Register, the underscores, brackets and this footnote will be deleted.

Insert where indicated  
on page 21

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). 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, Section 50.92 also issued under Public Law \_\_\_\_\_, \_\_\_\_\_ Stat. 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). (\_\_\_\_\_, U.S.C. \_\_\_\_\_).

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)).

PART 50 - DOMESTIC LICENSING OF  
PRODUCTION AND UTILIZATION FACILITIES

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

[Insert citation from opposite page here]

~~[John Philips to provide standard reference]~~

~~Section 50.92 also issued under Public Law \_\_\_\_\_, Stat. \_\_\_\_\_~~

~~(\_\_\_\_\_ U.S.C. \_\_\_\_\_).~~

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<sup>of this part</sup> 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 [therefore] for a hearing by any person whose interest may be affected, the Commission 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.

(2) If the Commission finds that no significant hazards consideration is presented by an application for an amendment to an [construction permit or] operating license for a facility described in subparagraph <sup>of this section</sup>

(b)(1), using the standards in §50.92(b), <sup>of this part</sup> (i) it may dispense with notice [and publication] of proposed action under § 2.105 of this chapter and (ii) it may issue the amendment, notwithstanding the pendency before it of a request for hearing from any person. Such an amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing.

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

§ 50.92 [50.91] 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.

(b) The Commission will determine that a proposed amendment to an operating license of a facility licensed under § 50.21(b) or § 50.22<sup>of this part</sup> or of a testing facility involves no significant hazards consideration, unless it finds that operation of the facility in accordance with the proposed amendment would:

- (1) Involve a significant increase in the probability or consequences of an accident from any accident previously evaluated;
- (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (3) Involve a significant reduction in a margin of safety.

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

(d) If the Commission determines that the amendment involves a significant hazards consideration, [the Commission] it will give notice of its proposed action pursuant to § 2.105 of this chapter before acting

[thereon] on the amendment. The notice will be issued as soon as practicable after the application has been docketed.

Dated at Washington D.C. this \_\_\_\_\_ day of \_\_\_\_\_, 1982.

For the Nuclear Regulatory Commission,

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Samuel J. Chilk  
Secretary for the Commission

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Criteria for Notice and Public Comment and Procedures for State  
Consultation on License Amendments Involving  
No Significant Hazards Consideration

*SUMMARY section -  
(OFR Requirement):  
Need to add two  
additional sentences to  
explain ① why the action  
is proposed and ② what  
the consequences of the  
proposed action would be.*

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Proposed rule.

SUMMARY: The NRC is proposing to amend its regulations to specify criteria for providing or dispensing with prior notice and public comment on determinations about whether amendments to operating licenses for certain facilities involve no significant hazards consideration. It is also proposing procedures for consultation on these determinations with the State in which the facility of the licensee requesting the amendment is located.

DATES: Comment period expires \_\_\_\_\_ (30) days following publication

*Check w/ TIDC - may  
need 60 to 90 days for  
OMB review*

in the FEDERAL REGISTER). Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Written comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555,

Attention: Docketing and Service Branch. Copies of comments received on the proposed rulemaking may be examined and copied for a fee 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) 492-3690.

SUPPLEMENTARY INFORMATION:

Introduction

On \_\_\_\_\_, Congress passed Public Law \_\_\_\_\_ to authorize appropriations for NRC and for other purposes. Among other things, the legislation directs NRC to promulgate regulations which establish (a) standards for determining whether an amendment to a license involves no significant hazards consideration, (b) criteria for providing or dispensing with prior notice and public comment on such a determination, and (c) procedures for consulting on such a determination with the State in which the facility of the licensee requesting the amendment is located. The legislation also authorizes 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. Additionally, the legislation specifies that such an amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing.

This proposed rulemaking and request for comments responds to the statutory directive that NRC expeditiously promulgate regulations for (1) providing or dispensing with prior notice and public comment on whether a license amendment involves no significant hazards consideration (item (b) above), and (2) providing for consultation on such a determination with the State in which the facility is located (item (c) above). The new legislation, affected prior legislation, and NRC's current regulations and practice are discussed in the statement of considerations accompanying the final regulations NRC is publishing today in this issue of the Federal Register as the first document in this separate part. The final regulations specify the standards for determining whether amendments to operating licenses for certain facilities involve no significant hazards consideration (item (a) above).

A. Criteria for Providing or Dispensing with Prior Notice and Opportunity for Public Comment

Section 12 of Public Law \_\_\_\_\_ requires NRC, during the 90-day period following the effective date of the law, to promulgate regulations establishing criteria for providing or, in emergencies, dispensing with prior notice and reasonable opportunity for public comment on whether an amendment to an operating license involves no significant hazards consideration; it also requires NRC to take into account the exigency of the need for the amendment involved. The requirement was explained by the Senate Committee on Environment and Public Works in its report on S.1207, the Senate bill which eventually became part of Public Law \_\_\_\_\_. The Committee stated:

The requirement . . . that the Commission promulgate criteria for providing or dispensing with prior notice and public

comment on a proposed determination that a license amendment involves no significant hazards consideration reflects the intent of the Committee that, wherever practicable, the Commission should publish notice of, and provide for public comment on, such a proposed determination. The Commission has advised the Committee that in some cases the need to issue the proposed amendment will arise quickly, and failure to act on the amendment may result in the shut-down or derating of the plant. The Committee recognizes that the need to act promptly in such situations may foreclose the opportunity for prior public notice and comment. However, in all other cases, the Committee expects the Commission to exercise its authority in a manner that will provide for prior public notice and comment. (Emphasis added.) Senate Report No. 97-113, May 15, 1981, at p. 15.

Section 12 of Public Law \_\_\_\_\_ specifies that:

The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued or proposed to be issued... 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.

Presently, under 10 CFR 2.106(a)(2), the Commission normally provides notice after it has issued a license amendment. However, where it determines that a significant hazards consideration is involved, under § 2.105(a)(3) it publishes a notice of "proposed action." This is not a notice for public comment; rather, it is a specific method for providing an opportunity for a public hearing. The Commission proposes to build on this foundation. To implement the Congressional mandate, the proposed regulation would require that, as a normal matter, NRC notice for public comment an amendment request after the staff has made a proposed determination that no significant hazards consideration is involved but before it has made the final determination and issued the license amendment. Accordingly, the Commission proposes to amend its regulations in 10 CFR Part 50, "Domestic Licensing of Production and

Utilization Facilities," <sup>by revising</sup> ~~to add a new~~ § 50.91 <sup>require that the</sup> ~~pursuant to which it would~~  
<sup>NRC will</sup> ~~normally~~ publish in the Federal Register a notice of a proposed determination on an application for an amendment to an operating license with a request for public comment. (The staff's determination about no significant hazards consideration would be made under a new 10 CFR 50.92(b), discussed in the first document in this separate part.) The Commission expects the licensee to make known to the staff its views about the issue of no significant hazards consideration when it files its amendment request. Thirty days would normally be provided for public comment.

If the Commission receives adverse comments on the proposed determination, ~~it would take~~ them into account in its final determination. Additionally, if the Commission receives a request for a hearing during this comment period, the Commission would not act on the hearing request until after it has made the final determination on no significant hazards consideration. If the person requesting a hearing meets the provisions for intervention called for in 10 CFR 2.714, the Commission normally would hold a hearing only after it issues an amendment, unless it determines that a significant hazards consideration is involved.

If the Commission determines in its proposed determination or in its final determination that a significant hazards consideration is involved, instead of issuing the proposed determination on no significant hazards, it would issue a notice of "proposed action" under § 2.105, providing an opportunity



for a prior hearing. The Commission may also hold a prior hearing in any case in which it finds that it is in the public interest to do so.

A concern with the notice and comment procedure discussed above is that a staff determination--even a quick first cut--would take time; and this period coupled with the waiting period for public comment before the ultimate finding on the merits of the amendment itself could be made, could, in some instances, put the staff in the position of making the requisite safety determinations and acting on an amendment request at the 11th hour in order to avoid derating or shutting-down the plant, thereby foreclosing a reasonable opportunity for public comment. Therefore, in keeping with Congressional intent, if the Commission receives an amendment request where the need to issue the proposed amendment arises quickly, for example, where failure to act on the amendment may result in the shut-down or derating of the plant, then, under § 50.91, it would proceed to publish in the Federal Register a notice of receipt for public comment on the issue of no significant hazards consideration, but would not delay its analysis of the issue or the effective date of any amendment to await public comments. This procedure would allow the public to comment on the issue of no significant hazards consideration at the same time as staff analysis is proceeding.

In an extraordinary case, when the Commission does not have time to publish either a notice of receipt or a notice of a proposed determination under § 50.91, it would publish a notice of issuance under § 2.106, as described below. In this instance, if it determines that there is no significant

hazards consideration and makes the requisite safety findings, it would issue the amendment but, as noted above, a hearing, if requested, may be held after issuance of the amendment. On the other hand, if the Commission determines that there is a significant hazards consideration, it would, under § 2.105, normally provide thirty-days' prior notice of "proposed action" on the requested amendment in order to afford an opportunity for interested persons to request a hearing on the determination. (This notice could be issued instead of the notice under § 50.91 or at any time after issuance of that notice.)

Of course, the Commission retains its separate authority to impose amendments on licensees without prior notice and hearing if it finds that the public health, safety or interest so requires. See 10 CFR 2.202(f) and 2.204.

Under the new provisions, the Commission would, in effect, normally provide prior notice for public comment as to the issue of no significant hazards consideration on all requests for amendments to certain operating licenses. As mentioned before, under § 2.106(a)(2) it presently provides notice after the fact by publishing notices of issuance for all these license amendments. Therefore, to avoid duplication of notices, the Commission proposes to amend § 2.106(a)(2) by providing for notice of issuance of an amendment only when (1) it has made a determination that an amendment request involves a significant hazards consideration and it has published a notice of proposed action under § 2.105 providing an opportunity for a public hearing; or (2) it has received adverse public comment about the issue of no significant hazards consideration on a requested amendment under the previously published notice

for public comment and has decided in its final determination that there is no significant hazards consideration; or (3) it has had to act quickly on the amendment request in order to avoid the shut-down or derating of the plant and has not published a notice of receipt or a notice of a proposed determination under § 50.91.

To provide a practical basis for implementing the new legislation, for amendments requested before the effective date of the final regulation on which the Commission has not acted by that date, the Commission proposes to keep its present procedures in Part 2, providing notice of proposed action and opportunity for a hearing under § 2.105, where appropriate, and notice of issuance under § 2.106. In addition, it would use the State consultation procedures, described below, for these amendment requests.

#### B. State Consultation

As noted above, Public Law \_\_\_\_\_ 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 the facility license involves no significant hazards consideration. The Senate Committee on Environment and Public Works explained this requirement in its Report, cited earlier, as follows:

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

(1) The State would be notified of a licensee's request for an amendment;

(2) The State would be advised of the NRC's evaluation of the amendment request;

(3) The NRC's proposed determination on whether the license amendment involves no significant hazards consideration would be discussed with the State and the NRC's reasons for making that determination would be explained to the State;

(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 Committee recognizes that a limited number of 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 of a power plant. Id., at p. 16.

The Commission believes that the law and its legislative history are quite specific. Accordingly, the Commission proposes to adopt the elements described above. The Commission notes three points in connection with the legislative history. First, the Commission would do its best to consult with the State, before it makes a determination about no significant hazards

consideration, but on very rare occasions may be unable to do so. In these few instances it would inform the State about its actions as soon as it can. The Commission's regulations in § 2.106 would cover this situation. Second, though the Commission intends to give careful consideration to the comments provided to it by the affected State on the no significant hazards question, the State comments are advisory to the Commission; the Commission remains responsible for making the final administrative decision on the question. Third, 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

check  
w/TIDC  
on this language

This proposed rule contains a new reporting requirement which will be submitted to the Office of Management and Budget for its review under the Paperwork Reduction Act.

Regulatory Flexibility Certification

double space

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. 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.

Part 2 - Rules of Practice

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

Place where indicated  
on page 11 →  
(do not list, write in "sentence"  
form)

Part 50 - Domestic Licensing of Production and Utilization Facilities

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

add: LIST OF SUBJECTS IN 10 CFR PARTS 2 AND 50;

(See opposite page)

Place Thesaurus terms here for parts 2 + 50

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, <sup>the Energy Reorganization Act of 1974, as amended,</sup> and section 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR ~~Part~~ <sup>Parts 2 and</sup> 50 is contemplated.

Thesaurus: ~~John Philips~~

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

<sup>1</sup>The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953 (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended by Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841); 5 U.S.C. 552.

(Section 2.101 also issued under secs. 53, 62, 81, 103, 104, 105, 68 Stat. 930, 932, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 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). Sections 2.200-2.206 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606, 2.730, 2.772 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (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. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133). Sections 2.800-2.807 also issued under 5 U.S.C. 553. Section 2.808 also issued under 5 U.S.C. 553 and sec. 102, 83 Stat. 853 (42 U.S.C. 4332). Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended by Pub. L. 95-209, 91 Stat. 1483 (42 U.S.C. 2039). Appendix A is also issued under sec. 8, Pub. L. 91-560, 84 Stat. 1472 (42 U.S.C. 2135))

PART

DOME

1. The authority cit

WS:

~~AUTHORITY: Secs. 161p and~~

~~(42 U.S.C. 2201(p) and 2231;~~

~~409 (42 U.S.C. 2241); sec. 2~~

~~(42 U.S.C. 5841); 5 U.S.C. 5~~

~~2.206 also issued under sec.~~

~~2236) and sec. 206, Pub.L. 93-438, 88 Stat. 1246 (43 U.S.C. 5846). Sec-~~

~~tions 2.800-2.808 also issued under 5 U.S.C. 553. [John Philips]~~

~~ind 953.~~

~~615, 76 Stat.~~

~~Stat. 1242~~

~~ions 2.200~~

~~(42 U.S.C.~~

2. In § 2.106, paragraph (a)(2) is revised to read as follows:<sup>1/</sup>

<sup>1/</sup> Additions are underscored and deletions are in brackets.

§ 2.106 Notice of issuance.

(a) \* \* \*

(a) The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will cause to be published in the Federal Register notice of, and will inform the State and local officials specified in § 2.104(a) of the issuance of:

\* \* \* \* \*

(2) An amendment of a license for a facility of the type described in § 50.21(b) or § 50.22 of this chapter, or a testing facility, [whether or not] for an amendment request received after <sup>insert the</sup> [effective date of <sup>the</sup> final ~~final~~ <sup>amendment</sup> regulation] where the Commission has received adverse public comments pursuant to the proposed determination published under § 50.91 <sup>of this chapter</sup> and has decided in its final determination that there is no significant hazards consideration; (ii) or where it has had to act quickly to avoid the shut-down or derating of the facility and has not published a notice of receipt or discussed its proposed determination with the appropriate State Official under § 50.91 <sup>of this chapter</sup>; or (iii) <sup>of this part</sup> for which a notice of proposed action under § 2.105 <sup>insert the</sup> has been published previously [published]. If the amendment request is received before <sup>the amendment</sup> [effective date of ~~final regulation~~], the Commission will provide the notice and information procedures in effect at the time the amendment is received.



Insert citation of authority where  
indicated on page 13



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. 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). Section 50.78 also issued under sec. 122, 68 Stat.

939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). *Section 50.91 also issued under Pub. L. \_\_\_\_\_, Stat. \_\_\_\_\_ (\_\_\_\_ v.s.c. \_\_\_\_\_).* Sections 50.100-50.102 also issued under sec. 186, 68 Stat. 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)).

*Insert authority citation from opposite page here*

PART 50 -- DOMESTIC LICENSING OF  
PRODUCTION AND UTILIZATION FACILITIES

*to read*

3. The authority citation for Part 50 is revised <sup>to read</sup> as follows:

~~AUTHORITY: Secs. 103, 104, 161, 182, 183, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246 (42 U.S.C., 5841, 5842, 5846), unless otherwise noted. Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.91 also issued under Pub. L. \_\_\_\_\_, \_\_\_\_\_ Stat. \_\_\_\_\_ (\_\_\_\_ U.S.C. \_\_\_\_\_). Sections 50.100-50.102 issued under sec. 186, 68 U.S.C. 955 (42 U.S.C. 2236). For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §50.54 (i) issued under section 161i, 68 Stat. 949 (42 U.S.C. 2201(i)), §§50.70, 50.71 and 50.78 issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)), and the Laws referred to in the Appendices. Section 50.91 also issued under Sec. 12 of Pub. L. \_\_\_\_\_. [John Philips]~~

*The section heading and text of §50.91 are revised*

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

§50.91 Public notice and comment; State consultation.

(a) With respect to applications received after <sup>insert the</sup> [effective date of ~~amendment~~ ~~final rule~~], as soon as practicable after receipt of an application for an

amendment to an operating license for a facility which is of a type described in § 50.21(b) or § 50.22, <sup>of this part</sup> or which is a testing facility, the Commission:

(1) Will normally make a proposed determination ~~about~~ <sup>of this part</sup> no significant hazards consideration and publish for comment in the Federal Register a notice of proposed issuance of the amendment. The notice will identify the facility concerned, briefly describe the requested amendment, and provide a 30-day comment period (unless for good reason it provides a shorter period) on the question of whether, pursuant to the criteria in § 50.92(b), <sup>of this part</sup> the amendment involves no significant hazards consideration;

(2) Will publish for public comment in the Federal Register a notice of receipt in the manner described in ~~sub~~ <sup>(A) of this section</sup> paragraph (1), when the need to issue the proposed amendment arises quickly, such as in an instance where failure to act on the amendment may result in the shut-down or derating of the plant;

(3) Will publish a notice of issuance under § 2.106, <sup>of this chapter</sup> when, in an emergency, it does not have time to publish either a proposed determination or a notice of receipt;

(b) The licensee requesting an amendment under paragraph (a) <sup>of this section</sup> shall make its views, if any, about the issue of no significant hazards consideration, known to the Commission when it files its application for the amendment.

(c) The Commission will provide for State consultation on its determination about no significant hazards consideration as follows:

(1) Each licensee applying for an amendment to an operating license for a facility specified in paragraph (a) <sup>of this section</sup> shall notify the State in which the licensee's facility is located of the licensee's request for an amendment by providing to that State a copy of the application, and shall indicate on the application that it has done so.

(2) After its evaluation of the amendment request, the Commission normally will discuss with the State its proposed determination on no significant hazards consideration, including its reasons for making the determination. The Commission will consider any comments of the State official designated to consult with it in its determination on no significant hazards consideration. After it issues the requested amendment, the Commission will send the State a copy of the amendment, appending its evaluation.

(3) For all amendment requests received before <sup>insert the</sup> effective date of <sup>the</sup> final ~~rule~~ <sup>insert the</sup> but not issued and for all amendment requests received after <sup>the amendment</sup> effective date of ~~final rule~~], the Commission will make a good faith attempt to consult with the State before issuing the license amendment. If failure to act quickly on the amendment, however, may result in the shut-down or derating of the plant, the Commission may dispense with prior State consultation. In this instance, as specified in § 2.106 <sup>of this chapter</sup>, it will inform the appropriate State official as soon as it can.

<sup>(d)</sup> ~~(e)~~ The State consultation procedures in paragraph <sup>(c)</sup> ~~(b)~~ of this section do not give the State a right:

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

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

Dated at Washington, D.C. this \_\_\_\_ day of \_\_\_\_\_, 1982.

For the Nuclear Regulatory Commission,

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Samuel J. Chilk  
Secretary for the Commission

NUCLEAR REGULATORY COMMISSION  
10 CFR Parts 2 and 50  
Temporary Operating Licenses

AGENCY: Nuclear Regulatory Commission (NRC)

ACTION: Final rule.

SUMMARY: The Commission has adopted amendments to its "Rules of Practice for Domestic Licensing Proceedings" in 10 C.F.R. Part 2 and to its regulations in 10 C.F.R. Part 50, "Domestic Licensing of Production and Utilization Facilities," to reflect the enactment of temporary operating licensing authority on \_\_\_\_\_, 1982. The new authority amended section 192 of the Atomic Energy Act of 1954, as amended (the Act), to authorize the NRC to issue temporary operating licenses for nuclear power plants. Section 192, initially added to the Act on June 2, 1972, authorized the Atomic Energy Commission to issue temporary operating licenses for nuclear power reactors under certain prescribed circumstances. The authority under the original section 192 expired, however, on October 30, 1973. To the extent that the amended section 192 is in substance the same as the original section, the implementing regulations in the amendments to Parts 2 and 50 likewise are similar in substance to the now expired regulations which were published in 1972 to implement the section initially. The amendments to Parts 2 and 50 set

out below are designed to conform Commission regulations and procedures to the new temporary operating licensing authority.

*(leave blank for date)*

DATE: [Effective date is 30 days following publication in the FEDERAL REGISTER.]

Comments on the amendments are invited from all interested persons within 30 days of publication of this notice in the FEDERAL REGISTER. Consideration will be given to such comments with a view to possible further amendments, if warranted.

ADDRESS: All interested persons who desire to submit written comments or suggestions for consideration in connection with the amendments should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received on the amendments 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:

Background

Following the March 1979 accident at the Three Mile Island nuclear power plant, the NRC devoted principal attention to evaluating the

accident and its implications for the safe regulation of nuclear power in this country, and to developing the necessary regulatory improvements for presently operating nuclear power plants. During this period, construction continued on those nuclear power plants with construction permits, although only very limited NRC effort was applied to preparing and completing the necessary safety review and hearing requirements for the issuance of operating licenses for these facilities. Largely as a result of this situation, it became apparent in late 1980 that delays would be experienced between the time when construction of some of these plants would be sufficiently completed to allow fuel loading and the start of operation, and the time when all requirements for the issuance of an operating license, including the hearing requirements of the Atomic Energy Act, would be met.

Under the Atomic Energy Act of 1954, as amended (the Act), no person may operate a nuclear power plant without first obtaining an operating license from the NRC. A formal on-the-record evidentiary hearing must be held - and a decision rendered on the basis of that record - if requested by any person whose interest may be affected, before the Commission may issue an operating license. Before the enactment of Public Law \_\_\_\_\_, however, the Commission lacked the authority to authorize fuel loading and low-power operation and testing on the basis of its safety and environmental evaluation; it was required instead to await authorization in the course of the hearing process (see 10 C.F.R. 50.57(c)).

Even with the administrative changes to the licensing process designed to reduce the time required to complete the license process for these plants, the potential for licensing delays remained for some of the



plants scheduled to be completed between 1981 and 1983. Although there are uncertainties as to the precise costs of the projected licensing delays for these plants, the estimates, even if limited only to the cost of replacement power, indicate that the cost to the utilities and to their ratepayers will be in the range of tens of millions of dollars a month for each completed plant.

In order to relieve the burden of these delays, on March 18, 1981, the Commission submitted a legislative proposal to amend the Act to authorize the Commission to issue a temporary operating license for a nuclear power plant, authorizing fuel loading and low-power operation and testing, in advance of the conduct or completion of an on-the-record evidentiary hearing on contested issues relating to the final operating license. Public Law \_\_\_\_\_, is the final legislative product of the Commission's proposal.

#### General

The temporary operating licensing authority could be used in any proceeding upon an application for an operating license for a utilization facility required to be licensed under sections 103 or 104b. of the Act, in which a hearing is otherwise required under section 189a. of the Act on the final operating license for the facility. Pending final action by the Commission on the application for the final operating license for the facility, the applicant may petition the Commission for a temporary operating license for such facility authorizing fuel loading, testing and operation at a specific power level to be determined by the Commission. The initial petition, however, would be limited to power levels not to

exceed 5 percent of the nuclear facility's rated full thermal power. After the temporary operating license is issued, the utility licensee may file one or more additional petitions with the Commission to allow facility operation in staged increases in power level beyond the initial 5 percent limitation. All authorizations for temporary operating licenses under section 192 and these implementing regulations shall be pursuant to a final order of the Commission itself. Any such action lies within the discretion of the Commission. The present authority and procedures in § 50.57(c) of the regulations (under which a presiding Atomic Safety and Licensing Board may, on motion, and after a decision based on the evidentiary record or upon agreement of the parties to the contested proceeding, authorize the issuance of a fuel load or low-power and testing license) remain available, however, and are not affected at all by these regulations implementing section 192 of the Act.

The circumstances under which petitions may be filed and conditions under which the Commission may exercise such authority are as prescribed in section 11 of Public Law \_\_\_\_\_. These provisions are reflected in the implementing amendments to Parts 2 and 50 set out below. In essence, these amendments establish a detailed procedural framework for considering and issuing temporary operating licenses. Section 192, as amended, and its accompanying legislative history clearly contemplate that such procedures are useful and needed safeguards to govern the Commission's actions in exercising the new authority and to preserve for the public a meaningful right to participate in licensing decisions.

New Subpart C to 10 C.F.R. Part 2 - "Procedures Applicable to Proceedings for the Issuance of Temporary Operating Licenses for Utilization Facilities Pursuant to Section 192."

Subpart C simply adds procedural requirements to 10 C.F.R. Part 2 which are needed to carry out the temporary operating licensing authority in section 192 of the Act and implemented in a new § 50.57(d) of 10 C.F.R. Part 50. Unlike the hearing on the final operating license, the temporary operating licensing process is subject neither to the hearing requirements of section 189a. of the Act nor to the requirements of subparts A or G of the Rules of Practice in 10 C.F.R. Part 2. Subpart C provides all of the necessary procedural guidance regarding requests for, and Commission authorization of, temporary operating licenses. Briefly, subpart C provides:

- For the petition for a temporary operating license to be filed in the form of a written motion. The written motion, with supporting affidavits, shall be served on all parties to the proceeding for the issuance of the final operating license.

- The initial petition shall be limited to power levels not to exceed 5 percent of full thermal power. Following the issuance of the temporary operating license, the licensee may file subsequent petitions with the Commission to amend the temporary operating license in staged increases at specific power levels in excess of the initial 5 percent limitation.

- The subpart provides general guidance on the contents and requirements for affidavits which may be filed in support of or in

opposition to petitions for the issuance, or the amendment, of temporary operating licenses.

The rules provide for prompt publication of notice of both petitions for a temporary operating license and for amending such a license with a 30-day period for public comment. They provide that the notice shall inform interested persons how they can go about obtaining access to the petition and its supporting affidavits. Such access is needed so that such persons might, as the rules also provide, file responsive affidavits to the petition. The rules do not specify a time after the 30-day public comment period for Commission action on the petition. In keeping with the purpose of the temporary operating license authority, the rules provide that the Commission will act as expeditiously as possible on petitions for temporary operating licenses and for amendments to such licenses.

Issuance of a temporary operating license or amendment thereto shall be pursuant to a final order of the Commission itself which recites the reasons called for in section 192 of the Act and § 50.57(d) of this chapter. The final order of the Commission shall be subject to judicial review under section 189b. of the Act.

The rules restate the procedural safeguards in section 192 to assure that the issuance of the temporary operating license does not prejudice the outcome of the licensing hearing for the final operating license for that plant or prejudice the rights of any party to the hearing to raise any proper issue in that hearing and to have that issue decided. Moreover, the rules require, as does section 192, that any party to the final operating license hearing, or any licensing board

member conducting such hearing, promptly notify the Commission of any information made available as part of that hearing that the terms and conditions of the temporary operating license are not being met, or that they are insufficient to provide reasonable assurance that operation of the facility during the period of the temporary operating license will provide adequate protection to the public health and safety and the environment.

Finally, the rules state that the Commission will assert its best efforts to adopt appropriate administrative remedies to minimize the need for the issuance of temporary operating licenses.

New § 50.57(d) of 10 CFR Part 50

A new § 50.57(d) has been added to reflect the substance of the temporary operating licensing authority granted by Public Law \_\_\_\_\_ and the special provisions which must be satisfied before the Commission exercises this authority. Pursuant to section 11 of Public Law \_\_\_\_\_ and § 50.57(d), the following requirements are applicable to a petition for and the issuance of a temporary operating license and amendments thereto:

A petition for the issuance of a temporary operating license cannot be filed with the Commission until the Advisory Committee on Reactor Safeguards (ACRS) report, the NRC staff's initial Safety Evaluation Report and the staff's supplement to the report prepared in response to the ACRS report for the plant, the NRC staff's final environmental statement, and a State, local or utility emergency plan have been filed.

The initial petition for a temporary operating license is limited by section 192 to power levels not to exceed 5 percent of the facility's rated full thermal power. After the temporary operating license is issued, however, the utility licensee may file petitions with the Commission to amend the temporary operating license to allow the facility to operate at specific power levels exceeding 5 percent of rated full thermal power. The latter levels could be up to and include full-power in those cases in which the Commission determines that such action is necessary. In all instances, action on such petitions shall be authorized pursuant to a final order of the Commission itself which shall reflect the basis for the findings required by section 192. Moreover, such actions lie within the sound discretion of the Commission itself.

Following the issuance of a temporary operating license, subsequent petitions from the utility, notice and public comment periods on each petition, and the determinations by the NRC called for by section 192 (and implemented in this new § 50.57(d)) are required before the Commission can allow operation, by amending the temporary operating license, at power levels beyond the initial 5 percent low-power testing level.

Before issuing a temporary operating license or amending the license to allow operation at succeeding power levels, NRC must provide notice of the request for such authority and a 30-day period for public comment.

Upon the expiration of the 30-day comment period, the Commission may issue the temporary operating license, or amend the license to allow temporary operation at power levels in excess of the initial license

limitation, as the case may be, if the Commission itself determines that: (1) all requirements of law other than the conduct of completion of any required hearing on the final operating license are met; (2) in accordance with such requirements, there is reasonable assurance that temporary operation of the facility in accordance with the terms and conditions of the license will provide adequate protection to the public health and safety and the environment; and (3) denial of the temporary operating license will result in delay between the time when the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the temporary operating license, and the time when a final operating license for the facility would otherwise be issued. For petitions to amend the temporary operating license to permit operation at power levels in excess of 5 percent of the facility's rated full thermal power, the Commission's findings must, of course, be directed to operation at the increased power levels which would be authorized by the amendment.

Any final Commission order authorizing the issuance of a temporary operating license pursuant to section 192 (i.e., as distinguished from an order which may be issued by a presiding Atomic Safety and Licensing Board under paragraph (c) of § 50.57) of the Act shall recite with specificity the reasons justifying the findings required by that section and § 50.57(d). The order must be sent upon issuance to the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives and the Committee of Environment and Public Works of the Senate.

The temporary operating license will contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for its extension. Section 192 provides that the authority shall expire on December 31, 1983.

The Commission will suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license (and on which a hearing under section 189a. is being conducted) with due diligence.

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Paperwork Reduction Act Statement

TITs proposed rule contains no new or amended requirements for recordkeeping, reporting, plans or procedures, applications or any other type of information collection.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission 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. 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.

Since the amendments which follow implement in the Commission's regulations new statutory provisions in Public Law \_\_\_\_\_, the Commission



Notes Tom,  
 If this rule is published before  
 your two "Part 2 + 50... Hazardous Consideration"  
 rules, you will have to conform the  
 Part 2 authority citations in those  
 rules to match this one

has found that general notice of proposed rulemaking and public participation therein are unnecessary and impracticable, and that good cause exists for making the amendments effective 30 days after the date of publication in the Federal Register.

[LIST OF SUBJECTS IN 10 CFR PARTS 2 AND 50]

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, the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Parts 2 and 50, are published as a document subject to codification, to be effective 30 days after the date of publication in the Federal Register.

Insert here (Thesaurus)

Part 2 - Rules of Practice

- 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 - Domestic Licensing of Production and Utilization Facilities

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

(Place in sentence form do not list)

PART 2--RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. (Authority: The provisions of Subpart C issued under §§ 161, 192, 68 Stat. 948, \_\_\_\_\_ Stat. \_\_\_\_\_, 42 U.S.C. 2201 and \_\_\_\_\_.)

[John Philips]

The authority citation for 10 CFR Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953 (42 U.S.C. 2201, 2231); sec. 192, as amended, Pub. L. 87-815, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended by Pub. L. 94-78, 89 Stat. 413 (42 U.S.C. 5841); 5 U.S.C. 552.  
 (Section 2.101 also issued under secs. 53, 62, 81, 103, 104, 105, 68 Stat. 930, 932, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2083, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 97-190, 83 Stat. 853 (42 U.S.C. 4332); sec. 301, 66 Stat. 1248 (42 U.S.C. 5871); Sections 2.102, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 163, 169, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239); Sections 2.200-2.206 also issued under sec. 166, 68 Stat. 955 (42 U.S.C. 2236); sec. 206, 68 Stat. 1246 (42 U.S.C. 5846); Sections 2.600-2.606, 2.730, 2.772 also issued under sec. 102, Pub. L. 97-190, 83 Stat. 853 (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; Section 2.790 also issued under sec. 103, 68 Stat. 938, as amended (42 U.S.C. 2133); Sections 2.800-2.807 also issued under 5 U.S.C. 553; Section 2.808 also issued under 5 U.S.C. 553 and sec. 102, 63 Stat. 853 (42 U.S.C. 4332); Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 879, as amended by Pub. L. 85-208, 61 Stat. 1483 (42 U.S.C. 2039); Appendix A is also issued under sec. 5, Pub. L. 97-560, 84 Stat. 1472 (42 U.S.C. 2135))

2. A new subpart C is added to 10 C.F.R. Part 2 to read as follows:

Subpart C - Procedures Applicable to Proceedings for the Issuance of Temporary Operating Licenses for Utilization Facilities Pursuant to Section 192.

§ 2.300 Scope of subpart.

This subpart prescribes the procedures applicable in any proceeding upon an application for an operating license for a utilization facility required to be licensed under sections 103 or 104b. of the Act, in which a hearing is otherwise required pursuant to section 189a., in which the applicant, pursuant to section 192 of the Act and § 50.57(d) of this chapter, petitions the Commission for a temporary operating license for such a facility authorizing fuel loading, testing, and operation at a specified power level to be determined by the Commission, pending action by the Commission on the application for the final operating license for the facility.

§ 2.301 Filing of petition and accompanying affidavits.

(a) Any petition filed by an applicant for a temporary operating license for each such facility shall be in the form of a written motion. The motion, including the accompanying affidavits, shall be served on all parties to the proceeding for the issuance of the final operating license. Any such petition may be filed at any time after the availability of the documents called for by section 192 of the Act and § 50.57(d) of this chapter.

(b) The initial petition for a temporary operating license for each such facility shall, in accordance with section 192 of the Act and § 50.57(d) of this chapter, be limited initially to power levels not to exceed 5 percent of the facility's rated full thermal power. A licensee, following issuance by the Commission of the temporary operating license for each such facility, may file subsequent petitions with the Commission to amend the temporary operating license to allow facility operation in staged increases at specific power levels, to be determined by the Commission, exceeding 5 percent of the facility's rated full thermal power.

§ 2.302 Contents of affidavits.

The applicant's petition for a temporary operating license shall be accompanied by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to justify issuance of the temporary operating license or the amendment thereto. Any such affidavit and any affidavit filed in response thereto shall state separately the specific facts and arguments and include the exhibits upon which the person relies. The facts asserted in any affidavit filed shall be sworn to or affirmed by persons having knowledge thereof, and a statement to this effect shall affirmatively appear in the affidavit. Except under unusual circumstances, such persons should be those who would be available to orally substantiate the facts asserted as the Commission deems appropriate. Any such affidavit shall be accompanied by a list of documents relied on to support the facts stated in the affidavit and the

place where such documents, other than those issued by the Commission's staff, are available for inspection.

§ 2.303 Notice of petition.

The Commission will promptly publish notice of each petition for issuance of a temporary operating license and any subsequent petitions for amendments thereto in the Federal Register and in such trade or news publications as the Commission deems appropriate to give reasonable notice to persons who might have a potential interest in the grant of such a temporary operating license or amendment thereto. The notice will inform such persons of the arrangements for their access to the petition and supporting affidavits. Any person may file affidavits in support of, or in opposition to, the petition within 30 days after the publication of such notice in the Federal Register. The Commission thereafter will act as expeditiously as possible to reach a determination on such petitions.

§ 2.304 Responsive affidavits.

Responsive affidavits in opposition to the petition shall be accompanied by a short and concise statement of the material facts as to which it is contended that there exists a substantial issue concerning the issuance of the temporary operating license or amendment thereto. Any responsive affidavit and any accompanying statement shall be served on all parties to the proceeding for the issuance of the final operating license.

§ 2.305 Commission authorization.

(a) Issuance of a temporary operating license or amendment thereto shall be pursuant to a final order of the Commission itself which recites the reasons for such authorization as called for in section 192 of the Act and § 50.57(d) of this chapter.

(b) The requirements of section 189a. of the Act with respect to the issuance or amendment of facility licenses shall not apply to the issuance or amendment of such a temporary operating license. Thus, neither subpart A nor subpart G of this part applies to the consideration of a petition for the issuance or amendment of such a temporary operating license.

(c) The final order of the Commission with respect to the issuance of a temporary operating license shall be subject to judicial review pursuant to Chapter 158 of title 28 of the United States Code.

§ 2.306 Hearing on the final operating license.

(a) Issuance of a temporary operating license under section 192 of the Act and § 50.57(d) of this chapter shall be without prejudice to the right of any party to a proceeding for the issuance of the final operating license to raise any issue in a hearing required pursuant to section 189a. of the Act. Failure to assert any ground for denial or limitation of such a temporary operating license shall not bar the assertion of such ground in connection with the issuance of a subsequent final operating license.

(b) Any hearing on the application for the final operating license for a facility required pursuant to section 189a. of the Act shall be

concluded as promptly as practicable. The Commission shall suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence.

§ 2.307 Notification to the Commission.

(A) Any party to a hearing required pursuant to section 189a. of the Act on the final operating license for a facility for which a temporary operating license has been issued under section 192 of the Act and § 50.57(d) of this chapter, and any member of the Atomic Safety and Licensing Board conducting such hearing, shall promptly notify the Commission of any information made available as part of such hearing that:

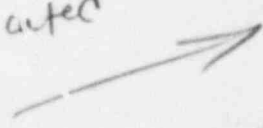
(b) ~~(a)~~ the terms and conditions of the temporary operating license are not being met; or that

(c) ~~(b)~~ such terms and conditions are not sufficient to provide reasonable assurance that operation of the facility will provide adequate protection to the public health and safety and the environment during the period of the facility's temporary operation.

§ 2.308 Administrative remedies.

The Commission shall assert its best efforts to adopt such administrative remedies as it deems appropriate to minimize the need for the issuance of temporary operating licenses pursuant to section 192 of the Act and § 50.57(d) of this chapter.

*Insert on next page  
when indicated*




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). 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 Stat. 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)).



*Section 50.57 (d) also issued under §§ 161, 192, 68 U.S.C. 948, Stat. \_\_\_\_\_, 42 U.S.C. 2201 and \_\_\_\_\_.*

Note: Tom, If this rule is published before your two # Hazards Consideration (Part 2 + 50 rules), you will have to conform the Part 50 citation for those rules to match this one.

PART 50--DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

The authority citation for 10 CFR Part 50 is revised to read

3. Authority: ~~Section 50.57(d) also issued under §§ 161, 192,~~ as follows:

~~68 U.S.C. 948, Stat. \_\_\_\_\_, 42 U.S.C. 2201 and \_\_\_\_\_~~

Insert citation of authority here

~~[John Philips]~~

4. In § 50.57 of 10 CFR Part 50, a new paragraph (d) is added to read as follows:

§ 50.57 Issuance of operating license.

\* \* \* \* \*

(d)(1) An applicant for an operating license, in a case where a hearing is required in a pending proceeding for the final operating license for a facility required to be licensed under sections 103 or 104b. of the Act, may petition the Commission by a written motion, pursuant to section 192 of the Act and this paragraph (d) for a temporary operating license for such a facility authorizing fuel loading, testing, and operation at a specific power level to be determined by the Commission, pending final action by the Commission on the application for the final operating license.

(2) The initial petition for a temporary operating license for each such facility may be filed at any time after the filing of: (i) the report of the Advisory Committee on Reactor Safeguards (ACRS) required by subsection 182b. of the Act; (ii) the initial safety evaluation report on



the application by the regulatory staff and the staff's first supplement to the report prepared in response to the ACRS report; (iii) the staff's final detailed statement on the environmental impact of the facility prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; and (iv) a State, local, or utility emergency preparedness plan for the facility.

(3) The initial petition for a temporary operating license for each such facility, and any temporary operating license issued for such a facility based upon the initial petition, shall be limited initially to power levels not to exceed 5 percent of the facility's rated full thermal power.

(4) Following issuance by the Commission of the temporary operating license for each such facility, the licensee may petition the Commission to amend the license to allow facility operation in staged increases at specific power levels, to be determined by the Commission, exceeding 5 percent of the facility's rated full thermal power.

(5) Petitions for the issuance of a temporary operating license, or for an amendment to such a license allowing operation at a specific power level greater than that authorized in the initial temporary operating license, shall be accompanied by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to justify issuance of the temporary operating license or the amendment thereto.

(6) The Commission will publish notice of each such petition in the Federal Register and in such trade or news publications as the Commission deems appropriate to give reasonable notice to persons who might have a potential interest in the grant of such a temporary operating license or

amendment thereto. The notice will inform such persons of the arrangements for their access to the petition and supporting affidavits. Any person may file affidavits in support of, or in opposition to, the petition within 30 days after the publication of such notice in the Federal Register.

(7) With respect to any such petition, the Commission may issue a temporary operating license, or subsequently amend the license to authorize temporary operation at a specific power level greater than that authorized in the initial temporary operating license, as determined by the Commission, upon finding that:

(i) in all respects other than the conduct or completion of any required hearing, the requirements of law are met;

(ii) in accordance with such requirements, there is reasonable assurance that operation of the facility during the period of the temporary operating license in accordance with its terms and conditions will provide adequate protection to the public health and safety and the environment during the period of temporary operation; and

(iii) denial of such temporary operating license will result in delay between the date on which construction of the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the temporary operating license, and the date on which a final operating license for such facility would otherwise be issued under the Act.

(8) Any final Commission order authorizing the issuance of any temporary operating license pursuant to section 192 of the Act and this paragraph will recite with specificity the reasons justifying the find-

ings required by that section and this paragraph, and will be transmitted upon such issuance to the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(9) The temporary operating license will become effective upon issuance and will contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for the extension thereof. The Commission will suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence.

(10) The authority under section 192 of the Act and this paragraph expires on December 31, 1983.

Dated ~~at~~ Washington, D.C., this \_\_\_\_\_ day of \_\_\_\_\_, 1982.

For the Nuclear Regulatory Commission,

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Samuel J. Chilk  
Secretary to the Commission