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JUNE 18 1980

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

MEMORANDUM FOR: W. E. Campbell, Jr., Office of Standards Development
FROM: Robert Reid, Chief, Operating Reactors Branch #4
Division of Licensing, NRR
SUBJECT: PROPOSED RULE - NO SIGNIFICANT HAZARDS CONSIDERATION

The following comments on the proposed rule concerning no significant hazards consideration were recently called to my attention. These comments have been discussed with and concurred in by Tom Dorian, Office of the Executive Legal Director, and we believe that they merit your consideration in preparation of the final rule.

The proposed rule specifies the criteria for determining whether a proposed amendment to an operating license or to a construction permit involves no significant hazards consideration. However, as the rule is now written, these criteria apply only to facilities licensed under sections 103 and 104(b) of the Act or a testing facility licensed under 104(c). By limiting the criteria to these facilities, it raises the question of what criteria are applied to all other facilities licensed under 104(c) (research reactors and critical facilities). Since the criteria would also apply to the research/critical type facilities, there should be no limitation. Also, the criteria applied to an amendment of a license for radioactive waste specified in paragraph 2.105(a)(2) should be specified to improve the clarity of the rule.

Additionally, since the practice in 10 CFR Parts 2 and 50 is to refer to the types of facilities as they are identified in 10 CFR Part 50 rather than the Act, it would be consistent to do so in the proposed revision. For example, see the last paragraph in 2.105(a). These facilities are identified as "a facility of a type described in §50.21(b) or §50.22 of this chapter or a testing facility."

If you have questions concerning these comments, please contact Roberta Ingram on ext. 27435.

Robert W. Reid, Chief
Operating Reactors Branch #4
Division of Licensing
Office of Nuclear Reactor Regulation

cc: R. Purple
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NUCLEAR REGULATORY COMMISSION**10 CFR Parts 2 and 50****No Significant Hazards Consideration****AGENCY:** Nuclear Regulatory Commission.**ACTION:** Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations to specify criteria for determining whether a proposed amendment to an operating license or to a construction permit for a commercial or large production or utilization facility involves no significant hazards consideration. If the Commission determines that no significant hazards consideration is involved, it may issue an amendment to an operating license or to a construction permit and then publish a notice of the amendment in the *Federal Register*. Otherwise, it must publish the notice at least 30 days before the amendment is issued.

The proposed amendments to the regulations are in response to a petition for rulemaking filed on May 7, 1976, by Mr. Robert Lowenstein on behalf of three petitioners (Boston Edison Company, Florida Power and Light Company, and Iowa Electric Light and Power Company) requesting that criteria be specified to determine when no significant hazards consideration is involved.

DATE: Comment period expires May 27, 1980.

ADDRESSES: All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendments should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by May 27, 1980. Copies of comments received on the proposed rulemaking and comments received on the petition for rulemaking (PRM 50-17) may be examined in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. W. E. Campbell, Jr., Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Phone 301-443-5913.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission has under consideration amendments to its regulations in 10 CFR Part 2, "Rules of Practice for Domestic Licensing Proceedings," and 10 CFR Part 50, "Domestic Licensing of Production and

Utilization Facilities." The purpose of the amendments is to revise §§ 2.105(a)(3), 50.58(b) and 50.91 to specify criteria for determining whether a proposed amendment to an operating license or to a construction permit for a commercial or other large production or utilization facility (one licensed under section 103 or 104(b)); or a testing facility licensed under 104(c) of the Atomic Energy Act of 1954, as amended ("the Act"), involves no significant hazards consideration. The proposed amendments result from a petition for rulemaking (PRM 50-17) submitted by letter to the Secretary of the Commission on May 7, 1976, by Mr. Robert Lowenstein of the law offices of Lowenstein, Newman, Reis and Axelrad, acting on behalf of the Boston Edison Company, Florida Power and Light Company and Iowa Electric Light and Power Company. The petitioners request the Nuclear Regulatory Commission to amend 10 CFR Part 2, "Rules of Practice for Domestic Licensing Proceedings," and 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," with respect to the issuance of amendments to operating licenses for production and utilization facilities.

Section 189a of 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 section 103 or 104(b), or a testing facility licensed under section 104(c) without a public hearing if no hearing is requested by any interested person. However, § 189a 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. In cases where the Commission determines that there is no significant hazards consideration, the Commission may issue the amendment and then publish a notice in the *Federal Register*. In such cases, interested members of the public who wish to object to the amendment and request a hearing may do so, but a request for hearing does not, by itself, suspend the effectiveness of the amendment. Sections 50.58(b) and 50.91, 10 CFR, of the Commission's regulations implementing § 189a contain no criteria for determining when an amendment involves no significant hazards consideration.

The petitioners' proposed amendments to the regulations would require that the staff take into consideration, in determining whether a proposed amendment to an operating license involves a significant hazards consideration, whether operation of the plant under the proposed license amendment will (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. It is proposed that, if the staff reaches a negative conclusion as to both of these criteria, the proposed amendment shall be considered not to involve a significant hazards consideration.

The petition (Docket 50-17) was published for comment in the *Federal Register* on June 14, 1976 (41 FR 24006). Comments have been received from eight persons, four of whom are in favor of granting the petition and four of whom are opposed. Those in favor generally argued that the petitioners' proposed amendments, if adopted, would help eliminate unnecessary delays in effecting amendments to an operating license. Those opposed generally argued that the petitioners' proposed amendments would be contrary to congressional intent since they would tend to eliminate public participation. Opposing arguments were also made to the effect that the petitioners' proposed amendments would change the standard of review from one of finding "non-significance" to one of finding "substantial change," thus shifting the burden of proof. One opposing commenter also stated that the amendments could result in lengthy litigation over the meanings of the criteria proposed by the petitioners.

After consideration of the petitioners' proposed amendments and public comments received, the Commission believes that the licensing process can be improved by specifying criteria with respect to the meaning of "no significant hazards consideration." The Commission, however, does not agree with the petitioners' proposed criteria because of the limitation to "major credible reactor accidents" and their failure to include accidents of a type different from those previously evaluated.

During the past several years, the Staff has been guided in reaching its findings with respect to "no significant hazards consideration" by staff criteria and examples of amendments likely to involve, and not likely to involve,

significant hazards considerations. These criteria and examples have been promulgated within the Staff and have proven useful to the Staff. The Commission believes it would be useful to consider incorporating these criteria into the Commission's regulations for use in determining whether a proposed amendment to an operating license or to a construction permit of any production or utilization facility involves no significant hazards consideration. Subsequent to the resolution of the comments received on the proposed rule the Commission intends to incorporate into a Regulatory Guide the examples associated with the criteria.

Examples of amendments that are considered likely to involve significant hazards consideration are listed below.

- (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 reactor, an increase in authorized maximum core power level not previously publicly noticed.
- (vi) A change to technical specifications involving a significant unreviewed safety question.

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 the Definitions Sections, 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, the analytical methods used to demonstrate conformance with

the technical specifications and regulations are not significantly changed, and such methods previously have been found acceptable by the NRC.

(iv) A relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated.

(v) A relief granted upon satisfactory completion of construction from an operating restriction that was imposed because the facility construction was not yet 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 within regulation acceptance criteria; for example resulting from the application of a small refinement of a previously used calculational model or design method.

(vii) A change to make a license conform to changes in the regulations.

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

It should be noted that in the event an amendment to an operating license or construction permit involves no significant hazards consideration, the staff will cause a notice of proposed action to be published in the *Federal Register* prior to acting on the amendment when it is determined, pursuant to 2.105(a)(4), that an opportunity for a public hearing should be afforded.

Pursuant to the Atomic Energy Act of 1954, as amended, 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 2 and 10 CFR Part 50 is contemplated.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDING

1. Paragraph 2.105(a)(3) of 10 CFR Part 2 is revised to read as follows:

§ 2.105 Notice of proposed action.

(a) * * *

(3) An amendment of a license specified in paragraph (a)(1) or (2) of this section and which involves a significant hazards consideration. The determination of significant hazards consideration for production and utilization facilities licensed under sections 103 and 104(b) of the Act or a testing facility licensed under section

104(c) shall be based on the criteria set forth in § 50.91(b) of this chapter, or".

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

§ 50.58 [Amended]

2. Paragraph 50.58(b) of 10 CFR Part 50 is amended by revising the last sentence to read: "If the Commission finds that no significant hazards consideration is presented by an application for an amendment to a construction permit or operating license, considering the criteria set forth in § 50.91(b), it may dispense with such notice and publication and may issue the amendment."

3. 10 CFR Part 50, § 50.91 is amended by redesignating the present paragraph as paragraph "(a)" and adding new paragraphs (b) and (c) to read as follows:

§ 50.91 Issuance of amendment.

(a) In determining whether * * *

(b) In making a determination that a proposed amendment to a license or construction permit involves no significant hazards consideration, the Commission will consider whether operation of the facility in accordance with the proposed amendment would (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any evaluated previously, or (3) involve a significant reduction in a margin of safety.

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

(Secs. 1611, 139 as amended, Pub. L. 83-703, 66 Stat. 948, 955, Pub. L. 85-256, 71 Stat. 576 (42 U.S.C. 2201, 2239); Sec. 201, Pub. L. 93-438, 88 Stat. 1243 (42 U.S.C. 5841))

Dated at Washington, D.C., this 21st day of March, 1980.

For the Nuclear Regulatory Commission,
Samuel J. Chilk,
Secretary of the Commission.

[FR Doc. 80-4292 Filed 3-27-80; 8:48 am]

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