

August 21, 1981



SECY-81-20E

RULEMAKING ISSUE (Affirmation)

For: The Commission
From: Leonard Bickwit, Jr., General Counsel
Subject: SECY-81-20D - POLICY ON PROCEEDING WITH PENDING
CP AND MANUFACTURING LICENSE APPLICATIONS
Discussion: The preamble to the draft final rule in SECY-81-20D
includes the following (pg. 31 of Enclosure 3):

In the Notice of Rulemaking (46 FR 18045) published on March 23, 1981, under Substance of the Rule, the Commission stated, "It is the Commission's view that this new rule, together with the existing regulations, form a set of regulations, conformance with which meets the requirements of the Commission for issuance of a construction permit or manufacturing license." However, it should be noted that the Commission also indicated in that notice that some elements in the TMI Action Plan have not been acted upon and thus may be required at a future date.

10 CFR 2.76i, the so-called "immediate effectiveness rule" as most recently amended to include special review procedures formerly in Appendix B, contains the following applicable to construction permits and manufacturing licenses:

In this regard it should be understood that as a result of analyses still under way the Commission may change its present regulations

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Contact: Martin G. Malsch, OGC, 41465

SECY NOTE: IN CONNECTION WITH SECY-81-20D THE GENERAL COUNSEL HAS INDICATED THAT THE CHANGES TO 10 CFR PART 2 CONTAINED HEREIN ARE NEEDED. PLEASE VOTE ON THIS AS A SEPARATE ISSUE, BY WEDNESDAY, AUGUST 26, 1981 SO THIS CAN BE AFFIRMED AT THE AUG. 27 AFFIRM. SESSION WHERE SECY-81-20D IS NOW SCHEDULED.

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and regulatory policies in important respects and thus compliance with existing regulations may turn out to no longer warrant approval of a license application.

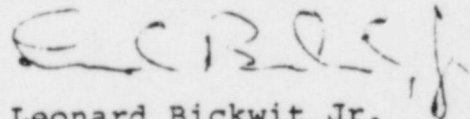
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Furthermore, the Commission may in a particular case determine that compliance with existing regulations and policies may no longer be sufficient to warrant approval of a license application and may alter those regulations and policies.

The quoted language from 10 CFR 2.764(e) was included in the rule because, as a result of the TMI Action Plan, the NRC was imposing several requirements beyond current regulations in individual licensing cases. This was made necessary by the fact that the current regulations were adopted before the TMI accident and had not been brought up to date.

If the Commission adopts the recommendation in SECY-81-20D, then the regulations will be brought up to date, at least for CPs and perhaps for manufacturing licenses as well. Thus some conforming changes to 10 CFR 2.764 (and perhaps 10 CFR 2.504) will be required. We have prepared the attached draft language for the notice of rulemaking to accomplish this. Also, the statement on page 26 of the preamble that "the Commission is currently considering a proposed rule effecting TMI-related licensing requirements for operating reactors" needs to be deleted in light of Commission action on SECY-81-422.

Attachment: Draft rule



Leonard Bickwit, Jr.
General Counsel

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. August 26, 1981.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT August 24, 1981, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for consideration at an open meeting during the week of August 24, 1981. Please refer to the appropriate weekly Commission Schedule, when published, for a specific date and time.

Distribution:
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Draft Rule Change
[deletions in brackets; additions underscored]

1. Add the following to the preamble on page 31 of Enclosure 3:

In the Notice of Rulemaking (46 FR 18045) published on March 23, 1981, under Substance of the Rule, the Commission stated, "It is the Commission's view that this new rule, together with the existing regulations, form a set of regulations, conformance with which meets the requirements of the Commission for issuance of a construction permit or manufacturing license." The Commission reaffirms this view and, to eliminate any ambiguity regarding its intent, is amending its special review procedures in 10 CFR 2.764 to delete the statement in paragraph (e) that compliance with existing regulations may turn out to no longer warrant approval of a license application. However, it should be noted that the Commission also indicated in that notice that some elements in the TMI Action Plan have not been acted upon and thus may be required [at a future date] on the basis of future rulemaking.

2. Amend 10 CFR 2.764(e) to read as follows:

(e) Construction Permits

(1) Atomic Safety and Licensing Boards

(i) * * *

(ii) In reaching their decisions the Boards should interpret existing regulations and regulatory policies with due consideration to the implications for those regulations and policies of the Three Mile Island accident. [In this regard it should be understood that as a result of analyses still under way the Commission may change its present regulations and regulatory policies in important respects and thus compliance with existing regulations may turn out to no longer warrant approval of a license application.] As provided in paragraph (e)(3) of this section, in addition to

taking generic rulemaking actions, the Commission will be providing case-by-case guidance on changes in regulatory policies in conducting its reviews in adjudicatory proceedings. The Boards shall, in turn, apply these revised regulations and policies in cases then pending before them to the extent that they are applicable. The Commission expects the Licensing Boards to pay particular attention in their decisions to analyzing the evidence on those safety and environmental issues arising under applicable Commission regulations and policies which the Boards believe present serious, close questions and which the Boards believe may be crucial to whether a license should become effective before full appellate review is completed. Furthermore, the Boards should identify any aspects of the case which in their judgment, present issues on which prompt Commission policy guidance is called for. The Boards may request the assistance of the parties in identifying such policy issues but, absent specific Commission directive, such policy issues shall not be the subject of discovery, examination, or cross-examination.

(2) Atomic Safety and Licensing Appeal Boards

* * *

(3) Commission

(i) * * *

(ii) * * *

(iii) In announcing the result of its review of any Appeal Board stay decision, the Commission may allow the proceeding to run its ordinary course or give whatever instructions as to the future handling of the proceeding it deems appropriate (for example, it may direct the Appeal

Board to review the merits of particular issues in expedited fashion; furnish policy guidance with respect to particular issues; or decide to review the merits of particular issues itself, bypassing the Appeal Board). [Furthermore, the Commission may in a particular case determine that compliance with existing regulations and policies may no longer be sufficient to warrant approval of a license application and may alter those regulations and policies.]

3. If the final rule does not include manufacturing licenses, then 10 CFR 2.504 should be amended to read as follows:

§ 2.504 Applicability of other sections.

The provisions of Subparts A and G relating to construction permits apply to manufacturing licenses subject to this subpart, with respect to matters of radiological health and safety, environmental protection, and the common defense and security, except that § 2.104(a) and (b) do not apply to manufacturing licenses and compliance with the existing substantive regulations applicable to construction permits may turn out to not warrant approval of a manufacturing license application. The provisions of Subparts A and G relating to construction permits and operating licenses apply, respectively, to construction permits and operating licenses subject to this subpart, except as qualified by the provisions of this subpart.

4. If the reservation regarding manufacturing licenses is confined to the hydrogen control issue, and the adequacy of the hydrogen control regulation in 10 CFR 50.46, then it would be highly desirable to confine the underlined additional language to this issue. In this event, 10 CFR 2.504 should be amended to read:

§ 2.504 Applicability of other sections.

The provisions of Subparts A and G relating to construction permits apply to manufacturing licenses subject to this subpart, with respect to matters of radiological health and safety, environmental protection, and the common defense and security, except that § 2.104(a) and (b) do not apply to manufacturing licenses and compliance with existing regulations on hydrogen control following a loss-of-coolant.

- * This assumes that existing regulations would be regarded as sufficient for issuance of CPs for plants with manufacturing license approved designs.

accident applicable to construction permits may not be sufficient, insofar as hydrogen control safety issues are concerned, to warrant approval of a manufacturing license application. The provisions of Subparts A and G relating to construction permits and operating licenses apply, respectively, to construction permits and operating licenses subject to this subpart, except as qualified by the provisions of this subpart.