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

DEC 3 1975

RL Assistant Directors
RL Branch Chiefs
RL Project Managers
RL Licensing Assistants

RL OPERATING PROCEDURE 601, REVISION 6
ISSUANCE OF OPERATING LICENSE AMENDMENTS, INCLUDING REVISIONS TO THE APPENDIX A AND B TECHNICAL SPECIFICATIONS

I. INTRODUCTION

This procedure revises in its entirety RL Operating Procedure 601, Revision 5 and contains guidance for issuing amendments to operating licenses, including revisions to Appendix A and Appendix B technical specifications of nuclear power plants and for amendments to research reactor licenses.

II. BACKGROUND

Based on 10 CFR 50.59:

1. Licensees may make changes in the facility or procedures and conduct tests or experiments not described in the safety analysis report without prior Commission approval unless such change, test or experiment involves a change in the technical specifications or an "unreviewed safety question."

2. A licensee who desires to make a change in the facility or procedures or to conduct tests or experiments which involve an "unreviewed safety question" or to make a change in the technical specifications must submit an application for an amendment to the license.

3. If the amendment involves a "significant hazards consideration", public notice and an opportunity for a hearing must be provided prior to Commission action on the application for amendment.

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

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

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

III. SIGNIFICANT HAZARDS CONSIDERATIONS AND NEPA DETERMINATIONS

It is neither possible nor desirable to provide a rigid formula which can be used to determine whether a proposed license amendment involves a significant hazards consideration. In some cases the collective judgement of senior staff members will be required before a decision can be made. For purposes of guidance, however, a proposed change or amendment can generally be categorized as involving a significant hazards consideration if: (1) it involves a significant increase in the probability or

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* Each PM should read the CEQ Guidelines; copies are included in the Guide for Preparation of Environmental Statements.

consequences of an accident, (2) it involves a significant decrease in a safety margin. These criteria must be applied using as a base what has been considered by the Commission in previous licensing actions in that specific case.

In evaluating a proposed license amendment, the staff must make two determinations. The first is whether the change involves a significant hazards consideration. If it does, public notice and an opportunity for a hearing must be provided prior to Commission action. This applies to power, testing and research reactors. The second determination which the staff must make, of course, is whether the proposed amendment is acceptable and presents no undue risk to the public health and safety.

The first determination will fall into one of three categories: (a) it clearly involves a significant hazards consideration and should be pre-noticed at the earliest practical date, (b) it clearly does not involve a significant hazards consideration, and need not be noticed until after the amendment is issued, or (c) there is uncertainty and normally the determination regarding pre-noticing will be deferred until the safety evaluation has progressed sufficiently to enable such a determination. There are some cases where the timing of the amendment is critical and it might be most expedient to pre-notice at the earliest practical date even though it is not possible to make a determination on significant hazards considerations.

Examples of Appendix A type license amendments which are more likely than others to involve significant hazards considerations are listed in Enclosure 1a. Types of license amendments which are not likely to involve significant hazards considerations are listed in Enclosure 1b. For these types listed, the first determination should be made within a few days of receipt of the proposed change as to whether or not to pre-notice immediately. As soon as this determination is made, the project manager should complete the determination form (Enclosure 2) and obtain the necessary concurrences. The ORPM is responsible for making the NEPA determinations as discussed below, although he may wish to consult with the EPM. This documents the staff intention regarding noticing of the proposed change.

Generally Appendix B type license amendments will not involve significant hazards considerations. Nevertheless, a determination form (Enclosure 2) should be completed in each case. Since Appendix B technical specifications include radiological effluent release limits in Section 2.4, each EPM should coordinate proposed changes to Section 2.4 specifications with the cognizant ORPM

consequences of an accident, (2) it involves a significant decrease in a safety margin. These criteria must be applied using as a base what has been considered by the Commission in previous licensing actions in that specific case.

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The first determination will fall into one of three categories: (a) it clearly involves a significant hazards consideration and should be pre-noticed at the earliest practical date, (b) it clearly does not involve a significant hazards consideration, and need not be noticed until after the amendment is issued, or (c) there is uncertainty and normally the determination regarding pre-noticing will be deferred until the safety evaluation has progressed sufficiently to enable such a determination. There are some cases where the timing of the amendment is critical and it might be most expedient to pre-notice at the earliest practical date even though it is not possible to make a determination on significant hazards considerations.

Examples of Appendix A type license amendments which are more likely than others to involve significant hazards considerations are listed in Enclosure 1a. Types of license amendments which are not likely to involve significant hazards considerations are listed in Enclosure 1b. For these types listed, the first determination should be made within a few days of receipt of the proposed change as to whether or not to pre-notice immediately. As soon as this determination is made, the project manager should complete the determination form (Enclosure 2) and obtain the necessary concurrences. The ORPM is responsible for making the NEPA determinations as discussed below, although he may wish to consult with the EPM. This documents the staff intention regarding noticing of the proposed change.

Generally Appendix B type license amendments will not involve significant hazards considerations. Nevertheless, a determination form (Enclosure 2) should be completed in each case. Since Appendix B technical specifications include radiological effluent release limits in Section 2.4, each EPM should coordinate proposed changes to Section 2.4 specifications with the cognizant ORPM

to assure that there are no significant hazards considerations associated with the proposed changes. Where an Appendix B type license amendment could involve a significant hazards consideration, the cognizant ORPM will take the lead in processing the amendment.

IV. REVIEW PROCEDURES

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

All Appendix A type license amendments require the preparation of a safety evaluation (see format in Enclosure 3). The determination of acceptability of an Appendix A type license amendment involves an assessment of whether there is reasonable assurance that the facility can be operated in the manner proposed without endangering the health and safety of the public. This determination is made at the completion of the safety evaluation and is documented in the SER. The scope and length of such a safety evaluation will be dependent on the significance and complexity of the amendment.

In connection with any Appendix A type amendment, the provisions of Part 51 on environmental matters must be considered. The cognizant ORPM, in consultation with the EPM as appropriate, and OELD, will make an appropriate finding regarding the necessary environmental determination and complete the information on the form shown in Enclosure 2. Guidance for determining proper action pursuant to Part 51 for Appendix A type license amendments is given in Enclosure 4. If an environmental statement or a negative declaration is appropriate, EP will prepare the document.

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

SOME EXAMPLES OF APPENDIX A TYPE LICENSE AMENDMENTS THAT ARE LIKELY TO INVOLVE SIGNIFICANT HAZARDS CONSIDERATIONS AND SHOULD BE PRENOTICED PRIOR TO SAFETY EVALUATION*

1. Increase in authorized maximum power level (not previously evaluated by staff).

2. Any relaxation of safety limits.

3. Any relaxation of limiting safety system settings.

4. Any amendment resulting from a Section 50.59 plant modification, test or experiment or Tech Spec changes that involves or results from an unreviewed safety question.

5. Any relaxation in limiting conditions for operation not accompanied by compensatory changes, conditions, or actions that maintain a commensurate level of safety.

6. Any plant modification or other change that involves a new and different kind of accident not included in the envelope of accidents considered previously.

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

SOME EXAMPLES OF LICENSE AMENDMENTS THAT ARE NOT LIKELY TO INVOLVE SIGNIFICANT HAZARDS CONSIDERATIONS AND SHOULD NOT BE PRENOTICED PRIOR TO SAFETY EVALUATION

1. Any change that is limited to Appendix B, Environmental Tech Specs.

2. Any purely administrative change to Tech Spec (e.g., any change to Admin. Controls Section or Definitions, or correction of an error, or a change in nomenclature).

3. Any change to Tech Spec resulting from a Section 50.59 change, test, or experiment that does not involve or result from an unreviewed safety question.

4. Any change proposed by licensee that constitutes an additional limitation, restriction, or control, not presently included in the Tech Specs, unless the change results from an unreviewed safety question.

5. Any changes resulting from a core reloading so long as no fuel assemblies significantly different from those used and analyzed for a previous core are involved, no changes are made to the bases for the Tech Specs, and the analytical methods used to demonstrate conformance with the bases are unchanged or are methods already found acceptable by the NRC.

6. Any increase in power level relieving an earlier restriction which was imposed because the plant construction was not yet completed satisfactorily.

7. Any change resulting from the application of a small refinement of a previously used calculational model or design method.

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producers who have not authorized a cooperative association to receive payment for their milk, and whose milk is not subject to the Oregon Base Plan pursuant to § 1124.68, shall report to the market administrator in detail and on forms prescribed by the market administrator as follows for each such producer:

(a) The producer's name, address and days of delivery;

(b) The total pounds of milk received from such producer, the average butterfat test thereof, and the pounds of butterfat contained in the producer's milk;

(c) The pounds of base and excess milk for each producer;

(d) The value of each producer's milk at the base and excess prices for the month;

(e) The nature and amount of any adjustments to and deductions from the payments due each producer; and

(f) The net amount of the payment made to each such producer for milk delivered during the month.

6. In § 1124.46, paragraphs (a)(4) and (5)(i) are revised to read as follow

§ 1124.46 Allocation of skim .id butterfat classified.

* * * * *

(a) * * *

(4)(i) With respect to a plant that was fully regulated in the preceding month under this or any other Federal milk order providing for a similar allocation of beginning inventories of packaged fluid milk products:

(*a*) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month; and

(*b*) Subtract from the pounds of skim milk in Class II the pounds of skim milk in packaged cream in inventory at the beginning of the month;

(ii) Subtract from the pounds of skim milk in Class II, the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or cream) that is used to produce, or added to, any product specified in § 1124.41(b), but not in excess of the pounds of skim milk remaining in Class II;

(5) * * *

(i) Other source milk in a form other than that of a fluid milk product or cream that was not subtracted pursuant to paragraph (a)(4)(ii) of this section;

* * * * *

7. In § 1124.82, paragraphs (c) (1) and (2) are revised and a new paragraph (c)(3) is added to read as follows:

§ 1124.82 Payments from the producer-settlement fund.

* * * * *

(c) * * *

(1) To each cooperative association authorized to receive payments due producers who market their milk through such cooperative association, and which is not subject to the Oregon Base Plan pursuant to § 1124.68, an amount equal to the aggregate of the payments calculated pursuant to paragraph (a) of this section for all producers certified to the market administrator by such cooperative association as having authorized such cooperative association to receive such payments;

(2) To the Director, Milk Audit and Stabilization Division, Oregon State Department of Agriculture, for each producer and cooperative association for milk subject to the Oregon Base Plan pursuant to § 1124.68, the aggregate of the payments otherwise due such individual producers and cooperative associations pursuant to paragraph (b) and paragraph (c)(1) of this section; and

(3) To each handler who so requests, for milk received by the handler from producers who have not authorized a cooperative association to receive payment for their milk and whose milk is not subject to the Oregon Base Plan pursuant to § 1124.68, an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraph (a) of this section subject to the provisions of § 1124.86. The handler then shall pay the individual producers the amounts due them on or before the date specified in paragraph (b) of this section. Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to participate in this payment arrangement until the handler has met all prescribed payment obligations for three consecutive months.

Effective date: March 1, 1986.

Signed at Washington, D.C., on: February 28, 1986.

Alan T. Tracy,

Acting Assistant Secretary, Marketing and Inspection Services.

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Final Procedures and Standards on No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: Pursuant to Pub. L. 97-415, NRC is amending its regulations in final form (1) to provide procedures under which, before granting or denying an amendment, normally it would give notice of opportunity for a hearing on applications it receives to amend operating licenses for nuclear power reactors and testing facilities and prior notice and reasonable opportunity for public comment on proposed determinations about whether these amendments involve no significant hazards considerations, (2) to specify criteria for dispensing with such prior notice and reasonable opportunity for public comment for amendment requests where emergency situations exist and for shortening the comment period for amendment requests where exigent circumstances exist, and (3) to furnish procedures for consultation on these determinations with the State in which the facility involved is located. Amendment requests for research reactors and construction permits are handled case by case. These procedures normally provide the public and the States with prior notice of NRC's determinations involving no significant hazards considerations and with an opportunity to comment on its actions.

EFFECTIVE DATE: May 5, 1986.

ADDRESSES: Copies of comments received on the amendments and of the other documents described below may be examined, or copied for a fee, in the Commission's Public Document Room at 1717 H Street, NW., Washington, DC. Named document may be purchased from the U.S. Government Printing Office (GPO) by calling 202-27[illegible]-2060 or by writing to the GPO, P.O. Box 37082, Washington, DC 20013-7082. They also may be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Thomas F. Dorian, Esq., Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-8690.

SUPPLEMENTARY INFORMATION:

Introduction

Pub. L. 97–415, signed on January 4, 1983, among other things, directed NRC to promulgate regulations which establish (a) standards for determining whether an amendment to an operating license involves no significant hazards consideration, (b) criteria for providing, or, in emergency situations, dispensing with, prior notice and public comment on any such determination, and (c) procedures for consulting with the State in which the facility involved is located on such a determination about an amendment request. *See* Conf. Rep. No. 97–884, 97th Cong., 2d Sess. (1982). The legislation also authorized 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) and in advance of the holding and completion of any required hearing.

The two interim final rules published in the **Federal Register** on April 6, 1983 ((48 FR 14864) and (48 FR 14873)), responded to the statutory directive that NRC expeditiously promulgate regulations on the three items noted above. The first dealt with the standards themselves and the second with the notice and State consultation procedures. These regulations were issued as final, through in interim form, and comments have been considered on them.

The following discussion is divided into three parts. The first discusses the background for this final rule, including a discussion of the proposed rule on the standards published before passage of the legislation, as well as an overview of the interim final rules published after the legislation was enacted. *See* 45 FR 20491 (March 28, 1980). The second analyzes and responds to the public comments on the two interim final rules. And the third discusses the present practice and modification made to it by the final rule.

I. Background

A. Affected Legislation, Regulations and Procedures

When the Atomic Energy Act of 1954 (Act) was adopted in 1954, it contained no provision which required a public hearing on issuance of a construction permit or an operating license for a nuclear power reactor in the absence of a request from an interested person. In 1957, the Act was amended to require that mandatory hearings be held before issuance of both a construction permit and an operating license for power reactors and certain other facilities. *See* Pub. L. 85–256 (71 Stat. 576) amending section 189a. of the Act.

The 1957 amendments to the Act were interpreted by the Commission as requiring a "mandatory hearing" before issuance of amendments to construction permits and operating licenses. *See, e.g.* Hearing Before the Subcommittee on Legislation, Joint Committee on Atomic Energy, 87th Cong., 2d. Sess. (April 17, 1962), at 6. Partially in response to the administrative rigidity and cumbersome procedures which this interpretation forced upon the Commission (*see*, Joint Committee on Atomic Energy Staff Study, "Improving the AEC Regulatory Process", March 1961, pp. 49–50), section 189a. of the Act was amended in 1962 to eliminate the requirement for a mandatory public hearing except upon the application for a construction permit for a power or testing facility. As stated in the report of the Joint Committee on Atomic Energy which recommended the amendments:

> Accordingly, this section will eliminate the requirements for a mandatory hearing, except upon the application for a construction permit for a power or testing facility. Under this plan, the issuance of amendments to such construction permits, and the issuance of operating licenses and amendments to operating licenses, would be only after a 30-day public notice and an offer of hearing. In the absence of a request for a hearing, issuance of an amendment to a construction permit, or issuance of an operating license, or an amendment to an operating license, would be possible without formal proceedings, but on the public record. It will also be possible for the Commission to dispense with the 30-day notice requirement where the application presents no significant hazards consideration. This criterion is presently being applied by the Commission under the terms of AEC Regulation 50.59. House Report No. 1966, 87th Cong., 2d. Sess., p. 8.

Thus, according to the 1962 amendments, a mandatory public hearing would no longer be required before issuance of an amendment to a construction permit or operating license and a thirty-day prior public notice would be required only if the proposed amendment involved a "significant hazards consideration." In sum, section 189a. of the Act, as modified by the 1962 amendments, provided that upon thirty-days' notice published in the **Federal Register**, the Commission was permitted to issue an operating license, 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 was requested by an interested person. Section 189a. also permitted the Commission to dispense with such thirty-days' notice and **Federal Register** publication for the issuance of an amendment to a construction permit or an amendment to an operating license upon a determination by it that the amendment involved no significant hazards consideration. These provisions were incorporated into the Commission's regulations, which were subsequently changed. *See* §§ 2.105, 2.106, 50.58 (a) and (b) and 50.91.

The Commission's regulations before promulgation of the two interim final rules provided for prior notice of an application for an amendment when a determination was made that there is a significant hazards consideration, and also provided an opportunity for interested members of the public to request a hearing. Hence, if a requested license amendment were found to involve a significant hazards consideration, the amendment would not be issued until after any required hearing were completed or after expiration of the notice period. In addition, § 50.58(b) further explained the Commission's hearing and notice procedures, as follows:

> 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 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 therefor by any person whose interest may be affected, 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. If the Commission finds that no significant hazards consideration is presented by an application for an amendment to a construction permit or operating license, it may dispense with such notice and publication and may issue the amendment.

The Commission noted in its interim final rules that, after it has made its determination about whether a proposed license amendment does or does not present a signficiant hazards consideration, its hearing and attendant notice requirements come into play. Under its former rules, the Commission made its determination about whether it should provide an opportunity for a hearing before issuing an amendment together with its determination about whether it should issue a prior notice—

and the central factor in both determinations was the issue of "no significant hazards consideration." It had been argued that in practice this meant that the staff often decided the merits of an amendment together with the issue of whether it should give notice before or after it has issued the amendment. *See* 48 FR 14864, at 14865 (April 6, 1983). The argument arose, in part, because of some concern that the Act and the regulations did not define the term "significant hazards consideration" and did not establish criteria for determining when a proposed amendment involves "significant hazards considerations." Section 50.59 has, of course, all along set forth criteria for determining when a proposed change, test or experiment involves an "unreviewed safety question" but it was and is clear that not every such question involves a "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* § 2.106. In such a case, interested members of the public who wished to object to the amendment and request a hearing could do so, but a request for a hearing did not, by itself, suspend the effectiveness of the amendment. Thus, both the notice and hearing, if one were requested, occurred after the amendment was issued.

It is important to bear in mind as one reads this background statement and the final regulations that there is no intrinsic safety significance to the "no significant hazards consideration" standard. Neither as a notice standard nor as a standard about when a hearing may be held does it have a substantive safety significance. Whether or not an action requires prior notice or a prior hearing, no license and no amendment may be issued unless the Commission concludes that it provides reasonable assurance that the public health and safety will not be endangered and that the action will not be inimical to the common defense and security or to the health and safety of the public. *See, e.g.*, § 50.57(a). In short, the "no significant hazards consideration" standard is a procedural standard which governs whether an opportunity for a prior hearing must be provided before action is taken by the Commission, and, as discussed later, whether prior notice for public comment may be dispensed with in emergency situations or shortened in exigent circumstances.

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 (1981), *vacated and remanded*, 459 U.S. 1194 (1983), *vacated*, 706 F.2d 1229 (Table) (1983) (*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 hearing before issuing an amendment to an operating license for a nuclear power plant, 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 notice in the Federal Register.

At the request of the Commission and the Department of Justice, the Supreme Court agreed to review the Court of Appeals' interpretation of section 189a. of the Act. On February 22, 1983, the Supreme Court vacated the Court of Appeals' opinion as moot and directed the Court of Appeals to reconsider the case in light of the new legislation. On April 4, 1983, the Court of Appeals, having considered the legislation, found that the portion of its opinion holding that a hearing requested under section 189a. of the Act must be held before a license amendment becomes effective would be moot as soon as NRC promulgated the regulations to which the legislation referred. The Court also found that NRC, of course, was still under a statutory mandate to hold a hearing after an amendment became effective, if requested to do so by an interested party. Appeal Nos. 80-1691, 80-1783, and 80-1784.

The Court of Appeals' 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 so requires. *See*, Administrative Procedure Act, section 9(b), 5 U.S.C. 558(c); section 161 of the Atomic Energy Act, 42 U.S.C. 2201(c); 10 CFR 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, 426 (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."

The Commission believed that legislation was needed to change the result reached by the Court in *Sholly* because of the implications of the requirement that the Commission grant a requested hearing before it could issue a license amendment involving no significant hazards consideration. It also believed that, since most requested license amendments involving no significant hazards consideration are routine in nature, prior hearings on such amendments could result in unnecessary disruption or delay in the operations of nuclear power plants by imposing regulatory burdens unrelated to significant safety matters. Subsequently, on March 11, 1981, the Commission submitted proposed legislation to Congress (introduced as S. 912) expressly authorizing the NRC to issue a license amendment before holding a hearing requested by an interested person, when it made a determination that no significant hazards consideration was involved in the amendment.

After the House and Senate conferees considered two similar bills, H.R. 2330 and S. 1207, they agreed on a unified version (*see* Conf. Rep. No. 97-884, 97th Cong., 2d. Sess. (1982)) and passed Pub. L. 97-415. Specifically, section 12(a) of that law amends section 189a. of the Act by adding the following with respect to license amendments involving no significant hazards considerations:

(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 and made immediately effective 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 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.

Section 12(b) of that law specifies that:

(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 considerations, even though NRC has before it a request for a hearing from an interested person. In this regard, the Conference Report states:

The conference agreement maintains the requirement of the current section 189a. of the Atomic Energy Act that a hearing on the license amendment be held upon the request of any person whose interest may be affected. The agreement simply authorizes the Commission, in those cases where the amendment involved poses no significant hazards consideration, to issue the license amendment and allow it to take effect before this hearing is held or completed. The conferees intend that the Commission will use this authority carefully, applying it only to those license amendments which pose no significant hazards consideration. Conf. Rep. No. 97-884, 2d. Sess., at 37 (1982).

And the Senate has 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. *See* S. Rep. No. 97-113, 97th Cong., 1st Sess., at 14 (1981).

The public notice provision was explained by the Conference Report as follows:

The conferees note that the purpose of requiring prior notice and an opportunity for public comment before a license amendment may take effect, as provided in subsection (2)(C)(ii) for all but emergency situations, is to allow at least a minimum level of citizen input into the threshold question of whether the proposed license amendment involves significant health or safety issues. While this subsection of the conference agreement preserves for the Commission substantial flexibility to tailor the notice and comment procedures to the exigency of the need for the license amendment, the conferees expect the content, placement and timing of the notice to be reasonably calculated to allow residents of the area surrounding the facility an adequate opportunity to formulate and submit reasoned comments.

The requirement in subsection 2(C)(ii) 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 conferees' intent that, wherever practicable, the commission should publish prior notice of, and provide for prior public comment on, such a proposed determination.

In the context of subsection (2)(C)(ii), the conferees understand the term "emergency situations" to encompass only those rare cases in which immediate action is necessary to prevent the shutdown or derating of an operating commercial reactor . . . The Commission's regulations should insure that the "Emergency situations" exception under section 12 of the conference agreement will not apply if the licensee has failed to apply for the license amendment in a timely fashion. In other words, the licensee should not be able to take advantage of the emergency itself. To prevent abuses of this provision, the conferees expect the Commission to independently assess the licensee's reasons for failure to file an application sufficiently in advance of the threatened closure or derating of the facility. Conf. Rep. No. 97-884, 97th Cong., 2d Sess., at 38 (1982).

C. Basis for Interim Final Rule on Standards for Determining Whether an Amendment to an Operating License Involves No Significant Hazards Considerations and Examples of Amendments that Are Considered Likely or Not Likely to Involve Significant Hazards Considerations

Many of the comments on the interim final rules were the same or were similar to those on the proposed rule. To provide a convenient means for future reference, the comments and responses on the proposed rule and the petition for rulemaking are consolidated and repeated here with references to the earlier **Federal Register** citations. The comments received on the interim final rules are then discussed and the Commission's responses are provided.

1. Petition and Proposed Rule

General. The Commission's interim final rule on standards for determining whether an amendment involves no significant hazards consideration resulted from a notice of proposed rulemaking issued in response to a petition for rulemaking (PRM 50-17) submitted by letter to the Secretary of the Commission on May 7, 1976, by Mr. Robert Lowenstein. For the reasons discussed below, the petition was denied. *See* 48 FR 14867. However, the Commission published proposed standards, as intended by the petitioner, though not the standards requested. (PRM-50-17 was published for comment in the **Federal Register** on June 14, 1976 (41 FR 24006)). The staff's recommendations on this petition are in SECY/79-660 (December 13, 1979). The notice of proposed rulemaking was published in the **Federal Register** on March 28, 1980 (45 FR 20491). Note that the proposed rule was published before passage of the legislation and that the Congress was aware of this rule during passage of the legislation. The staff's recommendations first on a final rule and later on the interim final rules are in SECY-81-366, 81-366A, 83-16, 83-16A and 83-16B. (These documents are available for examination in the Commission's Public Document Room at 1717 H Street, NW, Washington, DC.)

In issuing the proposed rule, the Commission sought to define more precisely the standards for determining when an amendment application involved no significant hazards considerations. These standards would have applied to amendments to operating licenses, as requested by the petition for rulemaking, and also to construction permit amendments, to whatever extent considered appropriate. The Commission later decided that these standards should not be applied to amendments to construction permits, since such amendments are rare and normally would not be expected to involve a significant hazards consideration. It therefore modified the proposed rule accordingly. Additionally, the Commission stated in the interim final rules that it would review the extent to which and the way standards should be applied to research reactors. It also noted that meanwhile it would handle case-by-case any amendments requested for construction permits or for research reactors with respect to the issue of significant hazards considerations. (48 FR 14867.)

Before the proposed rule on standards was published, the Commission's staff was guided, in reaching its

determinations with respect to no significant hazards consideration, by standards very similar to those described in the proposed rule and in the interim final rules. In addition, the staff used a list of examples of amendments likely to involve, and not likely to involve, significant hazards considerations when the standards are applied. These examples were employed by the Commission in developing both the proposed rule and the interim final rules. The notice of proposed rulemaking contained standards proposed by the Commission to be incorporated into 10 CFR Part 50 and the statement of considerations contained examples of amendments to an operating license that are considered "likely" and "not likely" to involve a significant hazards consideration. The examples were samples of precedents with which the staff was familiar; they were representative of certain kinds of circumstances; however, they did not cover the entire range of possibilities; nor did they cover every facet of a particular situation. Therefore, it was clear that the standards themselves ultimately would have to govern determinations about whether or not proposed amendments involved significant hazards considerations.

The three standards proposed in the notice of proposed rulemaking were whether operation in accordance with the proposed amendment would not (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. The interim final rules did not change these standards. They did, however, change the introductory phrase to make the standards easier to understand and to use.

As a result of the legislation, the Commission formulated separate notice and State consultation procedures that provide in all (except emergency) situations prior notice of amendment requests. The notices usually make a "proposed determination" about whether or not significant hazards considerations are involved in connection with an amendment and, therefore, whether or not to offer an opportunity for a hearing before an amendment is issued; if a hearing request is received, a final determination is made about whether or not significant hazards considerations are involved. The decision about whether or not to issue an amendment has continued to remain one that, as a separate matter, is based on public health and safety.

2. Comments on Proposed Rule and Responses to these Comments

a. *General.* Nine persons submitted comments on the petition of rulemaking and nine persons submitted comments on the proposed amendments. One of the commenters stated that all three standards were unclear and useless in that they implied a level of detailed review of amendment applications far beyond what the staff normally performs. When it promulgated the interim final rule, the Commission stated in response to this comment that the standards have been and will continue to be useful in making the necessary reviews. 48 FR 14864, at 14867 (April 6, 1983). It added that the standards, when used along with the examples, will enable it to make the requisite decisions. *Id.* In this regard, it noted that Congress was more than aware of the Commission's standards and proposed their expeditious promulgation, quoting the Senate Report:

> . . . the Committee notes that the Commission has already issued for public comment rules including standards for determining whether an amendment involves no significant hazards consideration. The Committee believes that the Commission should be able to build upon this past effort, and it expects the Commission to act expeditiously in promulgating the required standards within the time specified in section 301 [i.e., within 90 days after enactment]. S. Rep. No. 97-113, 97th Cong., 1st Sess., at 15 (1981).

Similarly, the House noted:

> The committee amendment provides the Commission with the authority to issue and make immediately effective amendments to licenses prior to the conduct or completion of any hearing required by section 189(a) when it determines that the amendment involves no significant hazards consideration. However, the authority of the Commission to do so is discretionary, and does not negate the requirement imposed by the Sholly decision that such a hearing, upon request, be subsequently held. *Moreover, the Committee's action is in light of the fact that the Commission has already issued for public comment rules including standards for determining whether an amendment involves no significant hazards considerations. The Commission also has a long line of case-by-case precedents under which it has established criteria for such determinations.* . . . H. Rep. No. 97-22 (Part 2), 97th Cong., 1st Sess., at 26 (1981) (Emphasis added).

In regard to the second criterion in the proposed rule, a number of commenters recommended that the Commission establish a threshold level for accident consequences (for example, the limits in 10 CFR Part 100) to eliminate prior notice for insignificant types of accidents. This comment was not accepted. The Commission stated that 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 after further evaluation to have more severe consequences than previously evaluated. (48 FR 14868.)

The Commission explained that 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, involves a significant hazards consideration because it results 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). *Id.* Such a class of amendments typically is 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 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 ultimately would be satisfactorily resolved by the issuance of the amendment. Accordingly, the Commission added a new example (vii) to the list of examples considered likely to involve a significant hazards consideration. *Id. See* section I(C)(1)(d) below.

When the Senate Committee on Environment and Public Works was considering the legislation described above, it commented upon the Commission's proposed rule before reporting S. 1207:

> 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 pool. S. Rep. No. 97-113, 97th Cong., 1st Sess., at 15 (1981).

The Commission agreed with the Committee "that reasonable persons may differ on whether a license amendment involves a significant hazards consideration" and it tried "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." (48 FR 14868.) (Reracking is discussed in section I(C)(2)(b) and II(D), *infra*.) The Commission stated that the standards coupled with examples used as guidelines help draw as clear a distinction as practicable. It decided not to include the examples in the text of the interim final rules in addition to the original standards, but, rather, to keep them as *guidelines* under the standards for use by the Office of Nuclear Reactor Regulation. *Id.*

In promulgating the interim final rules, the Commission also noted to licensees that when they consider license amendments outside the examples, it may need additional time for its determination on no significant hazards considerations, and that they should factor this information into their schedules for developing and implementing such changes to facility design and operation. *Id.*

The Commission stated that the interim final rules thus went a long way toward meeting the intent of the legislation, quoting the Conference Report:

> The conferees also expect the Commission, in promulgating the regulations required by the new subsection (2)(C)(i) of section 189a. of the Atomic Energy Act, to establish standards that to the extent practicable draw a clear distinction between license amendments that involve a significant hazards consideration and those amendments that involve no such consideration. These standards should not require the NRC staff to prejudge the merits of the issues raised by a proposed license amendment. Rather, they should only require the staff to identify those issues and determine whether they involve significant health, safety or environmental considerations. These standards should be capable of being applied with ease and certainty, and should ensure that the NRC staff does not resolve doubtful or borderline cases with a finding of no significant hazards consideration. Conf. Rep. No. 97–884, 97th Cong., 2d Sess., at 37 (1982). *Id.*

The Commission stated that it had attempted to draft standards that are as useful as possible, that it had tried to formulate examples that will help in the application of the standards, and that the standards in the interim final rules were the product of a long deliberative process. (48 FR 14868.) (As will be recalled, standards were submitted by a petition for rulemaking in 1976 for the Commission's consideration.) The Commission then explained with respect to the interim final rules that the standards and examples were as clear and certain as the Commission could make them, noting the Conference Report admonition that the standards and examples "should ensure that the NRC staff does not resolve doubtful or borderline cases with a finding of no significant hazards consideration." *Id.* The Commission repeats this admonition to the staff in the response to comments in section II(C) below.

With respect to the Conference Committee's statement, quoted above, that the "standards should not require the NRC staff to prejudge the merits of the issues raised by a proposed license amendment," the Commission recalled that it was its general practice to make a decision about whether to issue a notice before or after issuance of an amendment together with a decision about whether to provide a hearing before or after issuance of the amendment; thus, occasionally, the issue of prior versus post notice was seen by some as including a judgment on the merits of issuance of an amendment. *Id.* For instance, a commenter on the proposed rule suggested that application of the criteria with respect to prior notice 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. *Id.*, at 14868–69. The implication of the comment was that the Commission at the prior notice 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.

The Commission noted in response that the legislation had mooted these comments by requiring separation of (1) the criteria used for providing or dispensing with public notice and comment on determinations about no significant hazards considerations from (2) the standards used to make a determination about whether or not to have a prior hearing if one is requested. *Id.*, at 14869. The Commission explained that under the two interim final rules, the Commission's criteria for public notice and comment had been separated from its standards on the determination about no significant hazards considerations. *Id.* It noted, in fact, that under the interim final rule involving the standards it would normally provide prior notice (for public comment and an opportunity for a hearing) for each operating license amendment request. It also stated that use of these standards and examples would help it reach sound decisions about the issues of significant versus no significant hazards considerations, and that their use would not prejudge the safety merits of a decision about whether to issue a license amendment. *Id.* Rather, it explained, the standards and the examples were merely screening devices for a decision about whether to hold a hearing before as opposed to after an amendment is issued and could not be said to prejudge the Commission's final public health and safety decision to issue or deny the amendment request. *Id.* As explained above, that decision has remained a separate one, based on separate public health and safety findings.

b. *Reracking of Spent Fuel Pools.* Before issuance of the two interim final rules, the Commission provided prior notice and opportunity for prior hearing on requests for amendments involving reracking of spent fuel pools. When the interim final rule on standards was published, the Commission explained that it was not prepared to say that reracking of a spent fuel storage pool will necessarily involve a significant hazards consideration. It stated, nevertheless, as shown by the legislative history of Pub. L. 97–415, specifically of section 12(a), that Congress was aware of the Commission's practice, noting that members of both Houses stated, before passage of that law, that they expected that this practice would continue. *Id.* The report on the Senate side has been quoted above; the discussion in the House is found at 127 *Cong. Record* at H 8156, Nov. 5, 1981.

The Commission decided not to include reracking in the list of examples that are considered likely to involve a significant hazard consideration, because a significant hazards consideration finding is a technical matter which has been assigned to the Commission. However, in view of the expressions of Congressional understanding, the Commission stated that it felt that the matter deserved further study. Accordingly, it instructed the staff to prepare a report on this matter, and stated that it would revisit this part of the rule upon receipt and review of the staff's report. *Id.* The report is described in detail in section II(D) below.

In the interim final rule on standards, the Commission stated that while it is awaiting its staff's report, it would make findings case by case on the question of no significant hazards consideration for each reracking application, giving full consideration to the technical circumstances of the case, using the standards in § 50.92 of the rule. *Id.* It also stated that it did not intend to make a no significant hazards consideration finding for reacking based on unproven technology. It added, however, that, where reracking technology has been well developed and demonstrated and where the Commission determines on a technical basis that reracking involves no significant hazards, the Commission should not be precluded from making such a finding. And it noted that, if it determines that a particular reracking involves significant hazards considerations, it would provide an opportunity for a prior hearing. *Id.*

The Commission also noted that under section 134 of the Nuclear Waste Policy Act of 1982, an interested party may request a "hybrid" hearing in connection with reracking, and may participate in such a hearing, if one is held. It stated that it would publish in the near future a **Federal Register** notice describing this type of hearing with respect to expansions of spent fuel storage capacity and other matters concerning spent fuel. *Id.* That notice can be found at 50 FR 41662 (October 15, 1985).

c. *Amendments Involving Irreversible Consequences.* Congress expressed some concern about amendments involving irreversible consequences, as evidenced in the Conference Report:

> The conferees intend that in determining whether a proposed license amendment involves no significant hazards consideration, the Commission should be especially sensitive to the issue posed by license amendments that have irreversible consequences (*such as those permitting an increase in the amount of effluents or radiation emitted from a facility or allowing a facility to operate for a period of time without full safety protections*). In those cases, issuing the order in advance of a hearing would, as a practical matter, foreclose the public's right to have its views considered. In addition, the licensing board would often be unable to order any substantial relief as a result of an after-the-fact hearing. Accordingly, the conferees intend the Commission be sensitive to those license amendments which involve such irreversible consequences. (Emphasis added.) Conf. Rep. No. 97-884, 97th Cong., 2d Sess., at 37-38 (1882).

The Commission noted (48 FR, at 14869) that this statement was explained in a colloquy between Senators Simpson and Domenici, as follows:

> Mr. DOMENICI. In the statement of managers, I direct attention to a paragraph in section 12, the so-called Sholly provision, wherein it is stated that in applying the authority which that provision grants the NRC should be especially sensitive to the issue posed by license amendments that have irreversible consequences." Is that paragraph in general, or specifically, the words "irreversible consequences" intended to impose restrictions on the Commission's use of that authority beyond the provisions of the statutory language? Can the Senator clarify that, please?
>
> Mr. SIMPSON. I shall. It is not the intention of the managers that the paragraph in general, nor the words "irreversible consequences," provide any restriction on the Commission's use of that authority beyond the statutory provision in section 189a. Under that provision, the only determination which the Commission must make is that its action does not involve a significant hazard. In that context, "irreversibility" is only one of the many considerations which we would expect the Commission to consider. It is the determination of hazard which is important, not whether the action is irreversible. Clearly, there are many irreversible actions which would not pose a hazard. Thus where the Commission determines that no significant hazard is involved, no further consideration need be given to the irreversibility of that action.
>
> Mr. DOMENICI. I thank the Senator for the clarification. That is consistent with my readings of the language. . . . 134 *Cong. Rec.* (Part II), at S. 13056 (daily ed. Oct. 1, 1982).

The Commission then noted, 48 FR 14869, that the statement was further explained in a colloquy between Senators Mitchell and Hart, as follows:

> Mr. MITCHELL. The portion of the statement of managers discussing section 12 of the report, the so-called Sholly provision, stresses that in determining whether a proposed amendment to a facility operating license involves no significant hazards consideration, the Commission "should be especially sensitive . . . to license amendments that have irreversible consequences." Is my understanding correct that the statement means the Commission should take special care in evaluating, for possible hazardous considerations, amendments that involve irreversible consequences?
>
> Mr. HART. The Senator's understanding is correct. As you know, this provision seeks to overrule the holding of the U.S. Court of Appeals for the District of Columbia in Sholly against Nuclear Regulatory Commission. That case involved the venting of radioactive krypton gas from the damaged Three Mile Island Unit 2 reactor—an irreversible action.
>
> As in this case, once the Commission has approved a license amendment, and it has gone into effect, it could prove impossible to correct any oversights of fact or errors of judgment. Therefore, the Commission has an obligation, when assessing the health or safety implications of an amendment having irreversible consequences, to insure that only those amendments that clearly raise no significant hazards issues will take effect prior to a public hearing. 134 *Cong. Rec.* (Part III), at S. 13292.

In light of the Conference Report and colloquies it had quoted, the Commission stated that it would ensure "that only those amendments that clearly raise no significant hazards issues will take effect prior to a public hearing" (48 FR 14870), and that it would do this by providing in § 50.92 for review of proposed amendments with a view about whether they involve irreversible consequences. *Id.* In this regard, it made clear in example (iii) that an amendment which allows a plant to operate at full power during which one or more safety systems are not operable would be treated in the same way as other examples considered likely to involve a significant hazards consideration, in that it is likely to meet the criteria in § 50.92. *Id.*

The Commission also emphasized that the example did not cover all possible cases, were not necessarily representative of all possible concerns, and were set out simply as guidelines. *Id.*

The Commission left the proposed rule intact to the extent that the interim final rules stated standards with respect to the meaning of "no significant hazards consideration." The standards in the interim final rules were identical to those in the proposed rule, though the attendant language in new § 50.92 as well as in § 50.58 was revised to make the determination easier to use and understand. To *supplement* the standards incorporated into the Commission's regulations, the guidance embodied in the examples was referenced in the procedures of the Office of Nuclear Reactor Regulation, copies of which were placed in the Commission's Public Document Room and sent to licensees, States, and interested persons. It was the Commission's intention that any request for an amendment meet the standards in the regulations, and that the examples simply provide supplementary guidance.

d. *Examples of Amendments That Are Considered Likely To Involve Significant Hazards Considerations Are Listed Below.* The statement of considerations for the interim final rules listed the following examples of amendments that the Commission considered likely to involve significant hazards considerations. *Id.* It explained that unless the specific circumstances of a license amendment request lead to a contrary conclusion when measured against the standards in § 50.92, then, pursuant to the procedures in § 50.91, a proposed amendment to an operating license for a facility licensed under

§ 50.21(b) or § 50.22 or for a testing facility will likely be found to involve significant hazards considerations, if operation of the facility in accordance with the proposed amendment involves one or more of the following:

(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 (such as allowing a plant to operate at full power during a period in which one or more safety systems are not operable).

(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 or other NRC approval involving a significant unreviewed safety question.

(vii) A change in plant operation designed to improve safety but which, due to other factors, in fact allows plant operation with safety margins significantly reduced from those believed to have been present when the license was issued. *Id.*

e. *Examples of Amendments That Are Considered Not Likely To Involve Significant Hazards Considerations Are Listed Below.* The statement of considerations for the interim final rules listed the following examples of amendments the Commission considered not likely to involve significant hazards considerations. 48 FR 14869. It explained that unless the specific circumstances of a license amendment request lead to a contrary conclusion when measured against the standards in § 50.92, then, pursuant to the procedures in § 50.91, a proposed amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility will likely be found to involve no significant hazards considerations, if operation of the facility in accordance with the proposed amendment involves only one or more of the following:

(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, *e.g.*, 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 it is justified in a satisfactory way that the criteria have been met.

(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 justified that construction has been completed satisfactorily.

(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan, *e.g.*, a change resulting from the application of a small refinement of a previously used calculational model or design method.

(vii) A change to conform a license 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. *Id.*

[As discussed below, the Commission has added examples (ix) and (x) in response to comments on the interim final rules.]

(ix) A repair or replacement of a major component or system important to safety, if the following conditions are met:

(1) The repair or replacement process involves practices which have been successfully implemented at least once on similar components or systems elsewhere in the nuclear industry or in other industries, and does not involve a significant increase in the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated; and

(2) The repaired or replacement component or system does not result in a significant change in its safety function or a significant reduction in any safety limit (or limiting condition of operation) associated with the component or system.

(x) An expansion of the storage capacity of a spent fuel pool when all of the following are satisfied:

(1) The storage expansion method consists of either replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits;

(2) The storage expansion method does not involve rod consolidation or double tiering;

(3) The Keff of the pool is maintained less than or equal to 0.95; and

(4) No new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion.

II. Responses to Comments on Interim Final Rules

The comments are described in somewhat greater detail in an attachment to SECY-85-209A.

A. Clarity of Standards

1.1 Comments—A group of commenters state that the three standards in § 50.92(c) are unclear and argue that the examples in the statement of considerations—which they believe are clearer than the standards—should be made part of the rule; otherwise, they argue, the examples have no legal significance.

Response—The Commission disagrees with the request. As explained in response to the comments on the proposed rule (*see* 48 FR 14864), the commenters are correct that the examples have no binding legal significance. However, they do provide guidance to the staff, licensees and to the general public about the way the standards may be interpreted by the Commission. The Commission did consider combining the standards and examples as a single set of criteria in the interim final rules, but decided against this because (i) the standards and examples had proved useful over time, (ii) the staff had used all three standards

and most of the examples well before they were published in rule form, and (iii) the approach had proved adequate. Upon reconsideration, the Commission has decided to retain the standards as they were set out in the interim final rule. *See* the response in section II(D) below for a description of the standards.

1.2 Comment—One commenter believes that the interim final rules "unduly" and "improperly" limit freedom of speech and that minor changes in a plant can lead to severe health and safety consequences, such as the 1983 anticipated transient without scram (ATWS) at the Salem nuclear power plant.

Response—It is unclear how the interim final rule might limit freedom of speech. It is clear, though, that some amendment requests entail changes to a plant requiring a review of whether or not previously unevaluated accidents pose severe consequences. As explained above, before issuing any amendment, the Commission is required by the Atomic Energy Act (Act) to find that there is adequate protection for the public health and safety. However, a determination that an amendment involves "no significant hazards consideration" includes a finding under the three standards that the change does not involve a significant increase in previously evaluated accident probabilities or consequences, that it does not present a new type of accident not previously evaluated, and that it does not involve a significant decrease in safety margins.

Thus, the concern raised by the comment is related, if at all, only to amendments that involve significant hazards. Procedures governing these types of amendments are unaffected by this rule change. *See, e.g.*, section 182a. of the Act.

1.3 Comment—One commenter suggests that the only standard that is needed is one that simply identifies those license amendments which make an accident possible.

Response—The standard suggested by the commenter is simple to state but impractical. An amendment may involve a previously reviewed issue and not alter the conclusions reached concerning accident probabilities or consequences. In such a case, the amendment may involve a system or component that is significant to an evaluation of a design basis accident yet not involve a significant hazards consideration. This suggestion changes the definition of "significant hazards considerations" and, thereby, changes the standards. The three standards given in the interim final rules together with the examples are directed to the issue of significant hazards. *See*, for instance the discussion in section II(F)(1.3) below.

1.4 Comments—One commenter requests that NRC should consider only "credible accident scenarios" in evaluating amendment requests against the first two standards. It also suggests that, with respect to the third standard (significant reduction in safety margins), the Commission initially should determine the extent of the existing safety margin before deciding the significance of a reduction, because the extent of the existing margin is clearly relevant to the Commission's determination.

On the other hand, another commenter argues that it is inappropriate to specify a percentage change above which the change becomes significant. It notes that when the safety margin is three orders of magnitude, a ten percent reduction is clearly not significant, and that when the safety margin is fifteen percent, a comparable percentage reduction may be significant. It also suggests that the cumulative effects of successive changes to one system must also be considered, and not merely the individual change which is being subjected to review at any given time.

Response—The first comment is similar to the original petition (*see* section I(C)(1) above) which proposed standards limited to "major credible reactor accidents." The Commission disagrees with this comment—as it did previously—because it allows too much room for argument about the meaning of "credible" in various accident scenarios and does not include accidents of a type different from those previously evaluated, which is one of the criteria for evaluating no significant hazards considerations.

The second commenter suggests that, in assessing the degree of reduction in margin in determining whether an amendment involves significant hazards considerations, the Commission should assess the cumulative effects (on margin) of successive changes to one system, not merely the individual change in margin brought about by the amendment in question. The Commission believes that such a suggestion would be inconsistent with its staff's long-time practice in assessing the degree of reduction in margin, would be inconsistent with the thrust of the three standards on no significant hazards consideration, and would result in multiple counting of margin changes. The standard states that the Commission is to determine whether the amendment will result in a significant reduction in margin. The intent is to compare the safety margin before the amendment to that which would exist after the amendment to determine whether *that* amendment would significantly reduce the margin. In applying this standard to determine whether a certain amendment involves significant hazards considerations, the intent is to assess just the reduction in margin from that amendment and not to assess all prior reductions in margin that resulted from prior amendments because these have already been considered. Consequently, the Commission has not accepted this suggestion.

1.5 Comments—One commenter points out that the three standards are virtually identical to the criteria in § 50.59 for determining whether unreviewed safety questions exist, and states that this similarity is appropriate.

Another commenter makes the same point but notes an important difference in § 50.59, namely, that the word "significant" is absent in paragraphs (a)(2)(i) to (a)(2)(iii) of that section. It suggests that § 50.59 should be amended to make it identical with § 50.92(c).

Response—Sections 50.59 and 50.92 serve two different purposes. The criteria in § 50.59(a)(2) are used to decide whether a proposed change, test, or experiment involves an "unreviewed safety question." Section 50.59 is used to decide, in part, whether prior Commission approval is necessary for the licensee of an operating reactor to make changes to it or to the procedures as described in the safety analysis report, or to conduct tests or experiments not described in the safety analysis report. The licensee may not make a change without such approval, if the change involves an unreviewed safety question. To insert the term "significant" into the criteria obviously would raise the threshold for making a determination. It would permit licensees to exercise far greater discretion in judging which changes require Commission review. Wide variations among licensees might be expected. If the Commission has not reviewed an issue, it should deliberate and decide whether its review is appropriate. Therefore, the comment has been rejected. The Commission is considering this subject, as discussed in Section II(K) below.

1.6 Comment—One commenter generally agrees with the interim final rules but believes that the word "significant" should be defined, if only to forestall court challenges by persons disagreeing with NRC. It suggests that NRC should create some sort of mechanism to resolve disputes between

the staff, a State, or other parties over whether or not an amendment request involves significant hazard considerations.

Response—The advantage of the notice provisions of the interim final rules is that they provide an opportunity for comment on proposed determinations. Based on a particular proposal in an amendment request, the Commission welcomes any and all persons' comments about the "significance" of the proposed action. Aside from using examples as guidelines, it believes that the term "significant" should not be defined in the abstract, but should be left to case-by-case resolution.

B. Clarity of Examples

Many commenters argue about the clarity of the various examples in the "likely" and "not likely" categories. Additionally, some want to change, to add to, or to subtract from the examples, noting for instance that the issue of repairs is problematic. A complete set of comments (as summarized) is attached to SECY-85-209A.

Additionally, two commenters argue that the word "significant' in the examples should be defined so as not to leave "critical decisions to the unreviewable judgment of the staff."

Finally, another commenter requests that the guidance embodied in both sets of examples should not only be referenced in the procedures of the Office of Nuclear Reactor Regulation, but that it should also be formally transmitted to all licensees in the form of a generic letter, regulatory guide, or other such document.

Response—The examples are merely guidelines and the Commission feels the present examples are adequate. A list of examples of all possible situations would be interminably long, and it is not the Commission's intent to provide such a listing. However, to clairfy the Commission's position on the repair or replacement of a major component or system important to safety, the following example has been added to the list of examples (in section 1(C)(2)(e)) above considered not likely to involve significant hazards considerations:

(ix) A repair or replacement of a major component or system important to safety, if the following conditions are met:

(1) The repair or replacement process involves practices which have been successfully implemented at least once on similar components or systems elsewhere in the nuclear industry or in other industries, and does not involve a significant increase in the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated; and

(2) The repaired or replacement component or system does not result in a significant change in its safety function or a significant reduction in any safety limit (or limiting condition of operation) associated with the component or system.

In this context, it once again bears repeating that the examples do not cover all possible examples and may not be representative of all possible concerns and problems. As problems are resolved and as new information is developed, the staff may refine the examples and add new ones, in keeping with the standards of this final rule.

As to the second set of comments, *see* the response to comment I(A)(1.6) above. Finally, as noted above, the guidance in the examples already has been sent to all licensees and others.

C. Classification of Decisions

Comments— Two commenters argue that the standards pose complex questions that "require a level of analysis that goes far beyond the initial sorting of issues that Congress authorized." They repeat an argument made when the standards were published as a proposed rule, namely, that "the use of these standards cannot help but require the NRC staff to make an initial determination, well before the formal hearing (if any) is held, of the health and safety merits of the proposed license amendment." And they argue that Congress did not authorize NRC to make such a determination in advance of the hearing on the merits. (A third commenter agrees with this argument.) In sum, these commenters would prefer standards that simply allow for the sorting of issues, rather than, as they argue, standards that allow the staff to determine issues which are "virtually the same" as those it determines when deciding whether or not to grant the license amendment.

In this same vein, both commenters argue that the standards contravene Congress' intent in that the Commission does not avoid resolving "doubtful or borderline cases with a finding of no significant hazards consideration."

Response—The Commission disagrees with the commenters, as explained in the previous discussion above on this very point. It should also be noted that one reason that determinations on significant hazards considerations are divided into "proposed determinations" and "final determinations" is to help sort the issues initially. In this process of sorting, the Commission hereby charges the NRC staff to assure that doubtful or borderline cases are not found to involve no significant hazards consideration. As explained above, the decision about whether to issue an amendment is based on a separate health and safety determination, not on a determination about significant hazards considerations.

D. Rerackings

Comments—A group of commenters state that rerackings should be considered amendments that pose significant hazards considerations, in light of the Commission's past practice and the understanding of Congress that the practice would be continued.

Another group of commenters agrees with the Commission's position that the significant hazards determination on each amendment request to expand a specific spent fuel pool should be based on the Commission's technical judgment.

Response—In its decision to issue the two interim final rules, the Commission directed the staff to prepare a report which (1) examines the agency's experience to date on spent fuel pool expansion reviews and (2) provides a technical judgment on the basis for which various methods to expand spent fuel pools may or may not pose significant hazards considerations.

The staff contracted with Science Applications, Inc. (SAI) to perform an evaluation of whether increased storage of spent fuel could pose significant hazards considerations in light of the guidance in the interim final rules. SAI provided a report entitled, "Review and Evaluation of Spent Fuel Pool Expansion Potential Hazards Considerations." SAI-84-221-WA Rev. 1 (July 29, 1983). On the basis of that report, the staff informed the Commission in SECY-83-337 (August 15, 1983) of the results of its study and included the SAI report. (Both the report and the study are available as indicated above.)

The staff provided the following views to the Commission.

(1) NRC experience to date with respect to spent fuel pool expansion reviews:

As the Commission noted, the staff has been providing prior notice and opportunity for prior hearing on amendments involving expansion of spent fuel pool storage capacity. *The applications were prenoticed as a matter of discretion because of possible public interest.* This was the basis cited for prenoticing these applications in statements to Congressional committees. Public comments or requests to intervene have been received on 24 of the 96 applications for amendments received to date to increase the storage capacity of onsite spent fuel pools. In most cases, the comments and requests to intervene have been resolved without actual

hearings before an ASLB [Atomic Safety and Licensing Board].

Of the 96 applications, 31 have been a second or third application for the same pool(s). All of these applications have proposed reracking to increase the storage capacity—that is, replacing existing spent fuel storage racks with new racks that permit closer spacing of spent fuel assemblies. Two of the applications involved more than simply replacing the racks on the spent fuel pool floor. In one case, the capacity was increased by a method referred to as double-tiering. In this method, a rack is filled with aged spent fuel while sitting on the pool floor; once filled, the rack is raised and placed on top of another filled rack. Double-tiering was approved by the staff for Point Beach 1 and 2 by amendments issued on March 4, 1979. The other method that has been proposed to increase pool storage capacity is referred to as rod consolidation. Rod consolidation involves dismantling or cutting apart the fuel assembly and putting the individual fuel rods closer together. Storage of only the fuel rods, without the spacers, end caps and other hardware, can increase storage capacity by 60 to 100 percent compared to storage of non-disassembled fuel. Rod consolidation—in conjunction with reracking—has been requested for only one plant—Maine Yankee. The staff's review of this application was completed a year ago, but the application is pending before an Atomic Safety and Licensing Board. We have approved 85 amendments involving spent fuel pool storage expansions and the rest are still being processed. A detailed table indicating the agency's experience to date with respect to spent fuel pool expansion is contained in the SAI report. As of now, every operating reactor except Big Rock Point has received approval for at least one reracking or had the closer spacing storage method approved with their initial license.

The technical review of requests to increase spent fuel pool storage capacity involves evaluating the physical and mechanical processes which may create potential hazards such as criticality considerations, seismic and mechanical loading, pool cooling, long term corrosion and oxidation of fuel cladding, and probabilities and consequences of various postulated accidents and failures of decayed spent fuel. Also, the neutron poison and rack structural materials must be shown to be compatible with the pool environment for a significant period of time due to the uncertainties as to how long the storage will actually be required on site. However, potential safety hazards associated with spent fuel pool expansions are not as large as those associated with the reactor operation because the purpose of the expansion is to allow longer term storage of aged spent fuel. Since most plants are now on an 18 month refueling cycle and the NRC is processing a second expansion request application in many instances, the present expansion requests are to allow continued storage of spent fuel that has decayed over a decade along with the normal discharge of relatively new spent fuel for which the pool was originally designed. Typically a PWR will replace about one third of its core at each refueling and a typical BWR will replace about one fourth of its core at each refueling. After a year of storage, about 99% of the initial radioactivity has decayed.

(2) Technical judgement on the basis which a spent fuel pool expansion amendment may or may not pose a significant hazards consideration:

The technical evaluation of whether or not an increased spent fuel pool storage capacity involves potential hazards consideration is centered on the Commission's three standards in the interim final rule.

First, does increasing the spent fuel pool capacity significantly increase the probability or consequences of accidents previously evaluated? As discussed in the SAI report, reracking to allow closer spacing of fuel assemblies does not significantly increase the probability or consequences of accidents previously analyzed. However, the rod consolidation method may increase the probability of a fuel drop accident by a factor of two because of the increase in the number of assembly lifts and involves handling of highly radioactive fuel assembly components. Double tiering of racks requires an increased frequency in lifting heavy loads over the spent fuel pool which would also increase the probability of an accident.

Second, does increasing the spent fuel storage capacity create the possibility of a new or different kind of accident from any accident previously analyzed? The staff, as well as SAI, have not identified any new categories or types of accidents as a result of reracking to allow closer spacing for the fuel assemblies. Double tiering and rod consolidation, however, do present new accident scenarios which may not be bounded by previous accident analysis for a given pool. In all reracking reviews completed to date, all credible accidents postulated have been found to be conservatively bounded by the valuations cited in the safety evaluation reports supporting each amendment.

Third, does increasing the spent fuel pool storage capacity significantly reduce a margin of safety? Neither the staff nor SAI have identified significant reductions in safety margins due to increasing the storage capacity of spent fuel pools. The expansion may result in a minor increase in pool temperatures by a few degrees, but this heat load increase is generally well within the design limitations of the installed cooling systems. In some cases it may be necessary to increase the heat removal capacity by relatively minor changes in the cooling system, *i.e.*, by increasing a pump capacity. But in all cases, the temperature of the pool will remain below design values. The small increase in the total amount of fission products in the pool is not a significant factor in accident considerations. The increased storage capacity may result in an increase in the pool reactivity as measured by the neutron multiplication factor (Keff). However after extensive study, the staff determined in 1978 that as long as the maximum neutron multiplication factor was less than or equal to 0.95, then any change in the pool reactivity would not significantly reduce a margin of safety regardless of the storage capacity of the pool.

The techniques utilized to calculate Keff have been bench-marked against experimental data and are considered very reliable.

In the interim final rule, the Commission stated that it was not the intent to make a no significant hazards consideration finding based on unproven technology. Reracking to allow a closer spacing between fuel assemblies can be done by proven technologies. The double tiering method of expansion can also be done by proven technology. Rod consolidation, however, involves new technology and increased handling of highly radioactive components of fuel assemblies.

In summary, both rod consolidation and double tiering represent potential safety hazards considerations. Rod consolidation involves relatively new technology and double tiering may significantly increase the probability of accidents previously analyzed. Replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits (a subset of reracking) is considered not likely to involve significant hazards considerations if several conditions are met. First, no new technology or unproven technology is utilized in either the construction process or in the analytical techniques necessary to justify the expansion. Second, the Keff of the pool is maintained less than or equal to 0.95. A Keff of greater than 0.95 may be justifiable for a particular application but it would go beyond the presently accepted staff criteria and would potentially be a significant hazards consideration. Reracking to allow closer spacing or the placing of additional racks of the original design on the pool floor, which satisfies the two preceding criteria, would be similar to example (iii) on nuclear reactor core reloading under examples of amendments that are not considered likely to involve significant hazards considerations. *Id.* (Emphasis added.)

The staff concluded in its technical judgement that a request to expand the storage capacity of a spent fuel pool which satisfies the following is considered not likely to involve significant hazards considerations:

(1) The storage expansion method consists of either replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits,

(2) The storage expansion method does not involve rod consolidation or double tiering,

(3) The Keff of the pool is maintained less than or equal to 0.95, and

(4) No new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion.

This judgment was based on the staff's review of 96 applications and the result of the SAI study, which indicates that if a spent fuel pool expansion request satisfies the above criteria then

it meets the three standards in the interim final rules in that it:

(1) Does not involve a significant increase in the probability or consquences of an accident previously evaluated;

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated; and

(3) Does not involve a significant reduction in a margin of safety.

Finally, the staff stated to the Commission that:

Applications which do not fall into the above category must be evaluated on a case-by-case basis. There are secondary issues which may be associated with a spent fuel pool expansion, but they must be considered on their own technical merit as a separate issue. As an example, transferring fuel to another site for storage or transferring fuel in a cask to another onsite spent fuel pool, if requested, must both be evaluated on a separate basis as to whether or not they involve significant hazards considerations.

The Commission has accepted its staff's judgment, discussed above. It has added the following new example (x) to the list of examples in the "not likely" category in section I(C)(2)(e) for reracking requests satisfying the four criteria noted above (Reracking requests that do not meet these criteria will be evaluated case by case.)

(x) An expansion of the storage capacity of a spent fuel pool when all of the following are satisfied:

(1) The storage expansion method consists of either replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits;

(2) The storage expansion method does not involve rod consolidation or double tiering;

(3) The Keff of the pool is maintained less than or equal to 0.95; and

(4) No new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion.

E. Irreversible Consequences

Comments—One commenter notes that license amendments involving irreversible consequences (such as those permitting an increase in the amount of effluents or radiation emitted from a facility or allowing a facility to operate for a period of time without full safety protections) require prior hearings so as not to foreclose the public's right to have its views considered. This commenter is especially concerned about the TMI-2 clean up and about the TMI-1 steam generator tube repairs. It argues that § 50.92(b) (which requires Commission "sensitivity" to significant, irreversible consequences) contravenes Congress' intent.

Another commenter requests that a State and the public should have a say about any amendment request involving an environmental impact before NRC issues an amendment. It wants more from the Commission than the statement in the interim final rules that the "Commission will be particularly sensitive" to such impacts.

Another commenter asserts that certain situations which involve "irreversible consequences," such as permanent increases in the amount of effluents or radiation emitted from a facility, should be treated like "stretch power" situations. It argues that this class of amendments should not be considered likely to involve significant hazards considerations as long as the discharge or emission level does not exceed those evaluated in the Safety Analysis Report, the Final Environmental Statement or generically by rulemaking (*i.e.*, Part 50, Appendix I). This commenter adds that any temporary increase within generally recognized radiation protection standards, such as those in 10 CFR Part 20, should be treated similarly. Moreover, it requests that these situations should be included as examples in the "not likely" category.

On the other hand, another commenter argues that license amendments involving temporary waiving of radiation release limitations (so that airborne radioactive waste can be released at a rate in excess of that permitted—an issue in the *Sholly* decision), should involve significant hazards considerations and, consequently, a prior hearing.

Response—The Commission disagrees with the comment that § 50.92(b) contravenes Congress' intent. That section is taken almost verbatim from the Conference Report (*see* section I(C)(2)(c) in this preamble) and is entirely consistent with the colloquy of the Senators quoted in that section.

Before NRC issues an amendment, a State and the public can have a say about any amendment request that involves an environmental impact. The procedures described before have been designed so that at the time of NRC's proposed determination (1) the State within which the facility is located is consulted, (2) the public can comment on the determination, and (3) an interested party can request a hearing. Section 50.92(b) simply buttresses the point that the Commission will be especially sensitive to the types of irreversible impacts described by the commenters.

The Commission has not accepted the last two commenters' suggestions. The legislation clearly specified that the Commission should be sensitive to the kinds of circumstances outlined by the commenters. The interim final rule repeats this language and seeks to insure that the Commission's staff will evaluate each case with respect to its own intrinsic circumstances.

F. Emergency Situations

1.1 Comments—One commenter requests that the term "emergency" be deleted from the rule because it could be confused with a different use of this term in a final rule issued on April 1, 1983 (48 FR 13966) involving the applicability of license conditions and technical specifications in an emergency. *See* §§ 50.54(x) and 50.72(c) It suggests that the phrase "warranting expedited treatment" or some similar phrase could be used instead of the term "emergency."

Two other commenters request that § 50.91(a)(5) (involving emergency situations) be clarified to make clear that an emergency situation can exist whenever it is necessary that a plant not in operation return to operation or that a derated plant operate at a higher level of power generation. One of the commenters argues that unnecessary economic injury or impact on a generating system should also be classified as an emergency situation. It recommends that § 50.91(a)(5) be amended by inserting, after the words "derating or shutdown of the nuclear power plant" the words "including any prevention of either resumption of operation or increase in power output." The other commenter concurs with these words and would add the words "up to its licensed power level" after "power output."

Another commenter suggests that an emergency situation should also exist where a shutdown plant could be prevented from starting up because the Commission had failed to act in a timely way.

Several commenters agree with these comments, arguing that emergency situations should (1) be broadly defined, (2) be available when a plant is shutdown and cannot startup without a license amendment, and (3) include situations where an amendment is needed (as is the case with exigent circumstances) to improve protection to public health and safety.

Response—The Commission understands that the term "emergency" is used in different ways in various sections of its regulations. However, the legislation and its legislative history,

quoted above in section I(A), are very clear on the use of that term and specifically do use that term; consequently, the term must be used as a touchstone for the Commission's regulations.

The Commission agrees with the commenters about need to broaden the definition of "emergency situations." The Conference Report quoted above described "emergency situations" as encompassing those cases in which immediate action is necessary to prevent the shutdown or derating of a plant. There may be situations where the need to prevent shutdown or derating can be equivalent in terms of impact to the need to startup or to go to a higher power level. The Commission believes that expanding the definition of "emergency situation" to include these situations in not inconsistent with Congress' intent. Thus the Commission has decided to adopt the thrust of these comments and has changed § 50.91(a)(5) accordingly. *See* also response to comment in section II(F)(1.3) below.

1.2 Comment—Section 50.91(a)(5) states that the Commission will decline to dispense with notice and comment procedure, "if it determines that the licensee has failed to make a timely application for the amendment in order to create the emergency and to take advantage of the emergency provision." One commenter requests that the rule specify what is meant by the term "timely application".

Response—The provision cited by the commenter is clear enough. It is extracted almost verbatim from the Conference Report. The Report indicated that a "licensee should not be able to take advantage of an emergency itself" and thus that the Commission's regulations "should insure that the emergency situation" exception under section 12 of the conference agreement "will not apply if the licensee has failed to apply for the license amendment in a timely fashion." Further:

> To prevent abuses of this provision, the conferees expect the Commission to independently assess the licensee's reasons for failure to file an application sufficiently in advance of the threatened closure or derating of the facility.

1.3 Comment—One commenter requests that NRC explain how it will process an amendment request that involves both an emergency situation and a significant hazard consideration. It suggests that, in this unlikely case, the Commission might issue an immediately effective order under 10 CFR 2.204.

Response—Since there is a possibility for confusion over the meaning of "emergency", § 50.91(a)(4) has been modified and a new § 50.91(a)(7) has been added to clarify the problem. With the "Sholly" regulations now in place, there are now two possible types of emergencies:

(a) a "safety-related emergency" in which immediate NRC action may be necessary to protect the public health and safety; and

(b) the "emergency" referred to in the "Sholly" legislation in which the prompt issuance of a license amendment is required in order, for instance, to avoid a shutdown. An example of this type of an emergency is where prompt action is needed for continued full-power operation but not necessarily to protect the public health and safety (health and safety, arguably, is protected by the shutdown, which would occur if the "emergency" license amendment were not issued). This "emergency" is more in the nature of an economic emergency for the licensee.

Two fundamentally different approaches to amending a license arise from these two different types of emergency:

(a) For a safety-related emergency, the Administrative Procedure Act and the Commission's own regulations (10 CFR 2.240) authorize (if not compel) the issuance of an immediately effective order amending a license without regard to whether the amendment involves significant hazards considerations and without the need to make a finding on no significant hazards considerations or to provide a prior Sholly-type of notice.

(b) For an "emergency" where a prompt amendment is required to prevent the shutdown but not to protect the public health and safety, an immediately effective license amendment, without prior notice, may be issued *only if* the amendment involves no significant hazards considerations.

Consequently: (a) Where an immediately effective license amendment is needed to protect the public health and safety, the Commission can issue an immediately effective order amending a license regardless of whether the amendment involves significant hazards considerations and without prior notice and prior hearing;

(b) Where an immediately effective license amendment is needed, for instance, only to prevent the shutdown but not to protect public health and safety, the Commission may issue such an immediately effective amendment only if the amendment involves no significant hazards considerations. If the amendment does involve a significant hazards consideration, the Commission is required by law to provide 30 days notice and an opportunity for prior hearing.

G. Exigent Circumstances

1.1 Comments—One commenter suggests that the two examples of exigent circumstances are unnecessarily narrow because both involve potentially lost opportunities to implement improvements in safety during a plant outage. The commenter recommends that the Commission make clear that these examples were not meant to be limiting and that exigent circumstances can occur whenever a proposed amendment involves no significant hazards consideration and the licensee can demonstrate that avoiding delay in issuance will provide a significant safety, environmental, reliability, economic, or other benefit.

Another commenter requests that exigent circumstances include instances (1) where a licensee's plant is shutdown and the licensee needs an amendment to startup and (2) involving significant hazards considerations. The commenter argues that both such cases entail delay and a significant financial burden on licensees.

Response—As explained above, the examples were meant merely as guidance and were meant to cover circumstances where a net safety benefit might be lost if an amendment were not issued in a timely manner. The Commission agrees with the first commenter that the examples should be read as also covering those circumstances where there is a net increase in safety or reliability or a significant environmental benefit.

As to the first point of the second comment, the Commission believes that there may be "exigent circumstances" which may involve start-up of a shutdown plant. In keeping with the thrust of the definition of "emergency situations," the "exigent circumstances" in § 50.91(a)(6) will include "start-up"and "increase in power levels". The discussion in section III(A) responds to the commenter's second point.

1.2 Comments—One commenter states that the public notice procedures for exigent circumstances should be no different from those for emergency situations.

Two commenters oppose the use of press releases or display advertising in local media, arguing that such notices would unnecessarily elevate the importance of amendment requests.

Another commenter recommends that if NRC believes that it must issue a press release, it should consult with the licensee on a proposed release before it

acts. It also requests that NRC inform the licensee of the States's and the public's comments and that it promptly forward to the licensee copies of all correspondence.

Two commenters also oppose the toll-free "hot-line" in exigent circumstances, arguing that the concept implies imminent danger or severe safety concerns which normally will not be present. One of these commenters requests, instead, the use of mailgrams or overnight express. It also recommends, if a hotline system is implemented, that the system should be confined to extraordinary amendments involving unique circumstances. To ensure accurate transcription of the comments received, it suggests that the comments be recorded and retained. The other commenter requests that copies of the recorded comments be sent to the licensee.

Another commenter suggests that the rule specify the geographical area to be covered by a notice to the media.

Response—By definition, in emergency situations NRC does not have time to issue a notice; in exigent circumstances, the Commission must act swiftly but has time to issue some type of notice; in most instances it will be a Federal Register notice requesting public comment within less than 30 days, but not less than two weeks. The Commission, of course, needs the cooperation of a licensee to make the system work and to act quickly. If NRC cannot issue a Federal Register notice for at least two weeks public comment in exigent circumstances, then, with the help of the licensee, it will issue some type of media notice requesting public comment within a reasonable time. It will consult with the licensee on a proposed release, on the geograpnical area of its coverage and, as necessary and appropriate, may inform it of the State's and the public's comments. If a system of mailgrams or overnight express is workable, it will use that as opposed to a hotline; however, it will not rule out the use of a hotline. And if it does use a hotline, it may tape the conversations and may transcribe them, as necessary and appropriate, and may inform the licensee of these.

1.3 Comment—One commenter notes that exigent circumstances can arise after the publication of a Commission notice offering a normal public comment period on a proposed determination. It requests that in these circumstances the final rule should make clear that an expedited schedule would be established for receiving public comments and issuing the amendment.

Response—The Commission agrees that emergency situations and exigent circumstances could arise during the normal comment period. If this were to occur, as noted in the notices it now issues, it will expedite the processing of the amendment request to the extent it can, if the request and the exigency or emergency are connected. As explained above, of course the Commission may also issue an appropriate order under 10 CFR Part 2 if there is an imminent danger to the public health or safety.

H. Retroactivity

Comments—One commenter requests (and another agrees) that NRC should clarify § 2.105(a)(4)(i)—which explains how NRC may make an amendment immediately effective—to state that NRC will not provide notices of proposed action on no significant hazards consideration amendment requests received before May 6, 1983 (the effective date of the interim final rule). It suggests that the Commission should publish instead notices of issuance of amendments pursuant to § 2.106.

Another commenter suggests expedited treatment for amendment requests received before May 6, 1983, when these relate to refueling outages scheduled by licensees before that date.

Response—The Commission has noticed amendment requests it received before May 6, 1983, along with its proposed determinations.

I. Notice and Consultation Procedures

1.1 Comments—One commenter proposes the following changes (endorsed by another commenter) to the notice procedures to shorten the comment period and to clarify the method of publication:

> Routine, minor amendments should be published in the monthly Federal Register compilation only and a ten-day comment period accorded. There should be no individual Federal Register notice in routine cases. An individual notice should be published in the Federal Register for requests that are not routine, such as for instance, steam generator modifications or reracking. These requests could also be published in the monthly compilation, but the comment period should run from the date of the individual notice. As in the case for routine amendments, we propose a ten-day comment period. In exigent circumstances, which could encompass either routine or non-routine requests, we propose that notice be published individually in the Federal Register and that a reasonable comment period be accorded taking into account the facts of the particular case.

The commenter argues that expedited notice procedures would satisfy the statutory requirements, would eliminate a large source of delay, and would be approved by the courts, since expedited procedures are the appropriate solution when notice and hearing are statutorily required but time is of the essence.

Two commenters are also concerned about the potential for delay in the new notice procedures, one requesting that the rule indicate the normal time NRC needs to process routine and emergency applications.

Response—The interim final rules preserve the option to publish individual or periodic Federal Register notices, or a combination of both. The Commission stated in the interim final rules that the periodic notices would be published at least every 30 days, leaving the option of more frequent publication if appropriate. Though it agrees that minor routine amendments could be published in its periodic notice and that non-routine amendments could be published in individual notices, it does not want to establish by rule any particular mode of publication.

The Commission does not agree that a 10-day comment period should be the norm. It believes that its system, which normally allows for 30 days public comment, is more in keeping with the intent of the legislation, which provided for a reasonable opportunity for public comment, except in emergency situations where there is no time provided for public comment and in exigent circumstances where there is less than 30 days provided.

Section 50.91(a)(6) has been clarified to indicate that the comment period on any notice begins on the date of that notice. If there is an initial individual notice and a later periodic notice, the comment period begins with the first notice.

Finally, the Commission does not agree that it should prescribe normal time periods for processing routine and emergency requests. Its staff will process all requests as quickly as it can. The Commission hereby directs the staff to handle requests promptly and efficiently to insure that the staff is not the cause for a licensee's emergency or exigency request.

1.2 Comments—One commenter argues that the consultation procedures created by the interim final rules do not meet Congress' intent because they leave it to a State to decide whether it wants to consult on the licensee's amendment request and NRC's proposed determination. It seeks "formal, active consultation" (before NRC makes its proposed determination and publishes a Federal Register notice) through the "scheduling of formal discussions between the State and the NRC on the proposed determination, with the foregoing of such only upon

written waiver of the State." It also seeks incorporation of the State's comments in the **Federal Register** notice along with an explanation of how NRC resolved these. Finally, it requests that NRC always telephone State officials before issuing an amendment, rather than merely "attempting" to telephone them as, the commenter states, the rule provides.

Another commenter is satisfied with the notice and consultation procedures, stating that "the regulations give the State no more authority in regulating the operation of the reactor then it had in the past, but they serve notice on the reactor operator that the State is an interested party in all nuclear operations within the State."

Response—The State consultation procedures are well within Congress' intent. These procedures allow a State to take on as active a role as it wishes, consulting with NRC on every amendment request, if it wants to do so.

On the other hand, if it wants to conserve its resources and consult only on amendment requests it considers important, it may do that as well. The system of formal consultation envisaged by the first commenter is contrary to the intent of Congress, as discussed in section III(B) below.

Finally, § 50.91(b)(3) of the interim final rule clearly states that before NRC issues the amendment, it will telephone the appointed State official in which the licensee's facility is located for the purpose of consultation. The Commission believes that this last step is needed to ensure that the State indeed is aware of the amendment request and does not wish to be consulted about it. The rule has been changed in minor ways to clarify these points.

J. Notices in Emergency Situations or Exigent Circumstances

Comment—One commenter recommends that the Commission clarify that it intends to issue a "post notice" under § 2.106 rather than a "prior notice" under § 2.105 when it has determined that there is an emergency situation or exigent circumstances and that an amendment involves no significant hazards consideration. The commenter suggests replacement of the phrase in § 2.105(a)(4)(ii) that "it will provide notice of opportunity for a hearing pursuant to § 2.106" with the words "instead of publishing a notice of proposed action pursuant to this section, it will publish a notice of issuance pursuant to § 2.106".

Response—The Commission has not accepted the latter part of the commenter's request. In an emergency situation involving no significant hazards consideration, the Commission will publish a notice of issuance of the amendment under § 2.106. The licensee or any other person with the requisite interest may request a hearing pursuant to this notice. Thus, implicit in § 2.106 is the notion that a notice of issuance provides notice of opportunity for a hearing. The phrase in § 2.105 makes this notion explicit. Finally, contrary to the commenter's assertion, the Commission does provide prior rather than post notice in exigent circumstances.

K. Procedures to Reduce the Number of Amendments

Comment—One commenter suggests that many of the routine matters which require amendments should not be subject to the license amendment process. It argues that greater use should be made of § 50.59 (involving changes, tests and experiments without prior Commission approval, where these do not involve an unreviewed safety question or a technical specification incorporated in a license) for changes involving routine matters by not placing such changes into the technical specifications and thereby avoiding the need to issue license amendments. Two commenters also generally endorse the Commission's proposed rule (published on March 30, 1982 in 47 FR 13369) that would reduce the volume of technical specifications now part of an operating license, thereby reducing the need to request license amendments.

Response—The Commission is reconsidering the proposed rule noted above. It may issue a Policy Statement in its stead, or another different, simplified proposed rule, or both.

L. License Fees

Comment—One commenter argues that licensees should not be assessed additional fees to finance activities involving no significant hazards considerations determinations. It states that recently NRC proposed to amend the existing regulations governing payment of fees associated with, among other things, the processing of license amendment requests. (Proposed rule: 47 FR 52454 (November 22, 1982); final rule: 49 FR 21293 (May 21, 1984).) The key element of the proposed changes related to assessment of fees based upon actual NRC resources expended, rather than upon fixed fees for various classes of amendments. The commenter adds that if the Part 170 changes are issued as proposed, after May 6, 1983—the effective date of the interim final rules—NRC resources expended as part of the notice and State consultation process would be financed by the requesting licensee. It asserts that licensees would *not* be the identifiable recipients of benefits resulting from this more involved process and thus licensees should not be assessed fees for expenses resulting from the public notice, State consultation, and other related activities. Finally, it argues that it is clear from the legislative history behind Pub. L. 97-415 that licensees are not the prime beneficiaries of this new license amendment process.

Response—It is clear that the issuance of a license amendment is a "special benefit" for the licensee, and that the Commission is therefore authorized to impose a fee to recover the cost to the agency of conferring that benefit. *Mississippi Power & Light Co. v. Nuclear Regulatory Commission*, 601 F.2d 223, 227 (5th Cir. 1979). The notice and consultation process established in the present rulemaking, together with all other aspects of the no significant hazards consideration determination, reflects statutory requirements that must be met in the issuance of a license amendment. Accordingly, the NRC resources expended in this part of the amendment proceedings are costs necessarily incurred by the agency on behalf of the licensee. Thus the Commission may include these costs in its fee for issuing the amendment.

While the Commission believes that the public as well as the licensee will benefit from this clarification and improvement in the amendment process, the "special benefit" of receiving a particular license amendment pertains to the licensee alone, and the Commission may therefore assess the full cost of providing it. *Mississippi Power & Light, supra*, at 230.

M. Regionalization

Comment—One commenter recommends that before NRC's headquarters transfers authority to the Regions to process "routine" amendments, there should be a clear understanding among the licensee, the Region and NRC's headquarters about the ground rules (1) on what would constitute "routine" versus "complex" amendments and (2) on the ways in which the amendments would be processed from the times they are requested, through notice and State consultation, to their grant or denial.

Response—The Commission agrees. For the time being, though, and perhaps in the future, NRC's headquarters will retain authority to process amendment requests for no significant hazards consideration determinations. *See, generally*, NRC Authorization Act for Fiscal Years 1984 and 1985 (Pub. L. 98-553, October 1984).

N. Exemption Requests

Comment—One commenter is concerned that NRC might automatically consider exemption requests as license amendments. It believes that exemption requests need not automatically be considered license amendments, even though NRC has occasionally elected to notice such requests in the **Federal Register** or has assigned license amendment numbers to the issuing documents.

Response—The Commission does not automatically consider exemption requests as license amendments. Most are not amendments. If an exemption to the regulations for a particular facility also entails or requires an amendment to the facility license, the amendment would be processed as a license amendment under the "Sholly" regulations and the requirements of the regulations could not be avoided simply because an exemption is also involved.

III. Present Practice, and Modifications Under the Final Rule

A. Notice for Public Comment and for Opportunity for a Hearing

In the two interim final rules, the Commission adopted the notice procedures and criteria contemplated by the legislation for no significant hazards consideration determinations. In addition it decided to combine the notices for public comment on no significant hazards considerations with the notices for opportunity for a hearing. Thus, normally, for operating license amendments for facilities described in § 50.21(b) or § 50.22 or for testing facilities, the Commission provided both prior notice of opportunity for hearing and prior notice of public comment. The Commission also explained in the interim final rules that while the substance of the public comments on the no significant consideration finding could be litigated in a hearing, when one is held, neither the Commission nor its Licensing Boards or Presiding Officers would entertain hearing requests on the NRC staff's substantive findings with respect to these comments. It noted that this is in keeping with the legislation which states that public comment cannot delay the effective date of an amendment. The Commission intends to continue this practice, as fully described below.

With respect to opportunity for hearing, the Commission amended § 2.105 to specify that normally it could issue in the **Federal Register** at least every 30 days, and perhaps more frequently, a list of "notices of proposed actions" or requests to amend operating licenses. These periodic notices—presently issued biweekly—now provide an opportunity to request a hearing within thirty days. The Commission also retained the option of issuing individual notices, as it sees fit. In the final rule, the Commission's procedures provide that a person whose interest may be affected by the proceeding may file a petition for leave to intervene and request a hearing. *See* § 2.105(d)(2). If the staff does not receive any request for a hearing on an amendment within the notice period, it takes the proposed action when it has completed its review and made the necessary findings. If instead it receives a request for a hearing, it acts under new § 50.91, which describes the procedures and criteria the Commission uses to act on applications for amendments to operating licenses.

To implement the main theme of the legislation, the Commission combined a notice of opportunity for a hearing with a notice for public comment on any proposed determination on no significant hazards consideration. *See* § 50.91. New § 50.91 also permits the Commission to make an amendment immediately effective in advance of the conduct and completion of any required hearing where there has been a no significant hazards consideration determination. To buttress this point, the Commission has modified § 50.58(b)(6) to state that only it on its own initiative may review the staff's final no significant hazards consideration determination. Thus, § 50.91 builds upon amended § 2.105, providing details for the system of **Federal Register** notices. For instance, exceptions are made for emergency situations, with no prior notice of opportunity for a hearing and for public comment, assuming no significant hazards considerations. In sum, this system added a "notice for public comment" under § 50.91 to the former system of "notice of proposed action" under § 2.105 and "notice of issuance" § 2.106.

Under this new system, the Commission requires an applicant requesting an amendment to its operating license (1) to provide its careful appraisal on the significant hazards issue, using the standards in § 50.92 (and whatever examples are applicable), and (2) if it involves the emergency or exigency provisions, to address the features on which the Commission must make its findings. (Both points are discussed below.) The staff has frequently stated to applicants that the Commission wants a "reasoned analysis" from an applicant. An insufficient or sloppy appraisal will be returned to the applicant with a request to do a more careful analysis. Where an application has been returned for such reasons, *i.e.*, because of the applicant's negligence, the applicant cannot use the exigency or emergency provisions of the rule for any subsequent application for the same amendment.

When the staff receives the amendment request, as described below, it decides whether there is an emergency situation or exigent circumstances. If there is no emergency, it makes a preliminary decision—called a "proposed determination"—about whether the amendment involves no significant hazards considerations. Normally, this is done before completion of the safety analysis or evaluation. In the proposed determination, it might accept the applicant's appraisal in whole or in part or it might reject the applicant's appraisal but, nonetheless, reach the same conclusion. With respect to the proposed determination, the staff views the term "considerations" in the dictionary sense, that is, as a sorting of factors as to which it has to make that determination. In this sorting, the three standards are used as benchmarks and, if applicable, the examples may be used as guidelines.

Amendment requests received before May 6, 1983 (the effective date of the interim final rules) have been processed in the same way, except that licensees have not been required to provide their appraisals.

At this stage, if the staff decides that no significant hazards consideration is involved, it can issue an individual **Federal Register** notice or list this amendment in its periodic—biweekly—publication in the **Federal Register**. This periodic publication lists not only amendment requests for which the Commission is publishing a notice under § 2.105, it also provides a reasonable opportunity for public comment by listing this and all amendment requests received since the last such periodic notice, and, like an individual notice, (a) providing a description of the amendment and of the facility involved, (b) noting the proposed no significant hazards consideration determination, (c) soliciting public comment on the determinations which have not been previously noticed, and (d) providing for a 30-day comment period.

Out of a total of 2404 notices of no significant hazards considerations the Commission received requests for hearings on 13 notices and comments on 15 notices. Out of a total of 36 notices of significant hazards considerations, the Commission received requests for hearings on 3 notices and no comments.

Between May 6, 1983 and September 30, 1985, the Commission published

various types of notices in addition to or to the exclusion of **Federal Register** notices (FRNs). Three were press releases only; four were press releases and paid announcements; one was a press release and an FRN; and one was a paid announcement only.

For the purpose of illustration, the following table lists the Commission's monthly FRNs between May 6, 1983, and September 30, 1985, on determinations about no significant hazards considerations (NSHC). The final rule clarifies that if an individual notice has been published, the periodic publication does not extend the deadline date for filing comments or providing an opportunity for a hearing. *See* § 50.91(a)(2).

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"SHOLLY" STATISTICS

May 6, 1983 through September 30, 1985	Biweekly FRN Proposed NSHC				Individual FRN Proposed NSHC				Individual FRN SHC				Totals			
PERIOD COVERED	Sept. 1985	4th Qtr. FY 85	FY 85 to date	Total to date	Sept. 1985	4th Qtr. FY 85	FY 85 to date	Total to date	Sept. 1985	4th Qtr. FY 85	FY 85 to date	Total to date	Sept. 1985	4th Qtr. FY 85	FY 85 to date	Total to date
Comment period:																
30 days	87	282	984	2155	2	5	47	249	0	6	10	36	89	293	1041	2440
Less than 30 days																
Short FRN					0	0	9	22					0	0	9	22
Press Release													0	1	5	9
Public comments received	0	0	0	1	0	0	3	11	0	0	0	0	0	0	3	(12 FRN 2 PR) 14
Requests for hearing	0	1	1	4	0	0	0	9	0	0	2	3	0	1	3	(15 FRN 1 PR) 16

Amendments issued - Total	82	228	874	1647
(1) With 30 days notice	76	213	830	1555
(2) Less than 30 days or NO NOTICE	6	15	43	82
(3) Hearing requested but final NSHC determination made (50.91(a)(4))	0	0	0	10
(4) Proposed NSHC; hearing requested; hearing completed and amendment issued. No final NSHC determination was made because hearing was completed before amendment was needed	0	0	1	1

Backlog: (Applications received which were not noticed, either in biweekly FRN or individually through September 30, 1985): NUMBER: 227 (Includes items which were prepared and approved for publication in the next biweekly, items which are in concurrence, and items for which additional information was needed from licensee.)

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While it is awaiting public comment, the staff proceeds with the safety analysis. After the public comment period, the Commission reviews the comments, if any, considers the safety analysis, and makes its decision on the amendment request. If it decides that no significant hazards consideration is involved, it either may publish an individual "notice of issuance" under § 2.106 or, normally, a notice of issuance in its system of periodic Federal Register notices, thus closing the public record. As the Commission explained in the preamble to the interim final rules, it does not normally make and publish a "final determination" on no significant hazards consideration, unless there is a request for a hearing as well as an NRC decision to make the amendment immediately effective before the hearing. In this regard, the staff need not respond to comments if a hearing has not been requested.

If it receives a hearing request during the comment period and the staff has decided that no significant hazards consideration is involved, it prepares a "final determination" on that issue which considers the request and the public comments, makes the necessary safety and public health findings, and proceeds to issue the amendment. The hearing request is treated the same way as in previous Commission practice, that is, by providing any requisite hearing after the amendment has been issued. As explained above, where the Commission has determined that no significant hazards consideration is involved, the legislation permits the Commission to make an amendment immediately effective in advance of the holding and completion of any required hearing, notwithstanding the pendency before it of a request for a hearing.

The procedures just described have been the usual way of handling license amendments under the interim final rules because most of these amendments do not involve (1) emergency situations, (2) exigent circumstances, or (3) entail a determination that a significant hazards consideration is involved. As discussed below, however, these three cases and other anomalies could arise.

For example, returning to the initial receipt of an application, if the staff were to receive an amendment request and then determine that a significant hazards consideration is involved, it would handle this amendment request by first issuing an individual notice of proposed action providing an opportunity for a prior hearing under § 2105, and, afterwards, as appropriate, notifying the public of the final disposition of the amendment by noting its issuance or denial in an individual Federal Register notice. As explained above, even if the amendment request were to involve an emergency situation and if it were determined that a significant hazards consideration were involved, the Commission would be required to issue a notice providing an opportunity for a prior hearing. If the Commission were to determine, however, that there was an imminent threat to public health or safety, it could issue an appropriate order under 10 CFR Part 2, as has been explained above, and as is also discussed below.

Another unusual case might arise: The staff may receive an amendment request and find an emergency situation, where failure to act in a timely way would result in derating or shutdown of a nuclear power plant. In this case, also discussed below in connection with State consultation, it may proceed to issue the license amendment, if it determines, among other things, that no significant hazards consideration is involved. In this circumstance, the staff might not necessarily be able to provide prior notice of opportunity for a hearing or prior notice for public comment; though it has not done this to date, it could issue an individual notice with an opportunity for a hearing after the amendment is issued (*see* § 2.106) or, as has been the case thus far, it could provide periodic notice (the Commission's periodic Federal Register notice system notes NRC's action on the amendment request and provides an opportunity for a hearing after issuance).

In the preamble to the interim final rules, in connection with emergency requests, the Commission stated that it expects its licensees to apply for license amendments in a timely fashion, explaining that it will decline to dispense with notice and comment on the no significant hazards consideration determination if it determines that the applicant has failed to make a timely application for the amendment because of negligence or in order to create the emergency so as to take advantage of the emergency provision. Whenever an emergency situation is involved, the Commission expects the applicant to explain to it why the emergency has occurred and why the applicant could not avoid it; the Commission will assess the applicant's reasons for failure to file an application sufficiently in advance of that event.

An emergency situation might also occur during the normal 30-day comment period. Depending upon the type of emergency (safety-related versus emergency situation in the "Sholly" sense—*see* section II(F)(1.1) above), the Commission would act under the system described above.

Another unusual case might occur where the Commission receives an amendment request and finds an exigent circumstance, that is, a situation other than an emergency where swift action is necessary. The legislation, quoted above, states that the Commission should establish criteria which "take into account the exigency of the need for the amendment." The Conference Report, quoted above, points out that "the conference agreement preserves for the Commission substantial flexibility to tailor the notice and comment procedures to the exigency of the need for the license amendment" and that "the conferees expect the content, placement, and timing of the notice to be reasonably calculated to allow residents of the area surrounding the facility an adequate opportunity to formulate and submit reasoned comments."

In the interim final rules, the Commission stated that extraordinary cases may arise, short of an emergency, where a licensee and the Commission must act quickly and where time does not permit the Commission to publish a Federal Register notice soliciting public comment or to provide the 30 days ordinarily allowed for public comment. As noted in the response to public comments on the two interim final rules, the Commission gave as examples two circumstances where expedited action by the Commission would result in a net benefit to safety. (*See* additional examples at II(G)(1.1).) For example, a licensee with a reactor shutdown for a short time might wish to add some component clearly more reliable than one presently installed or the licensee might wish to use a different method of testing some system and that method would be better than one provided for in its technical specifications. In either case, the licensee may have to request an amendment, and if the staff determines, among other things, that no significant hazards consideration is involved, it may wish to grant the request before the licensee resumes plant operation and loses the opportunity to improve the plant.

The Commission noted in the interim final rules that in circumstances such as the two just described, it may use media other than the Federal Register to inform the public of the licensee's amendment request. For example, it may use a local newspaper published near the licensee's facility which is widely read by the residents in the area surrounding the facility. The Commission stated that in these instances it will provide the public

a reasonable opportunity to comment on the proposed no significant hazards determination. It also stated that to ensure timely receipt of the comments, it may also establish a toll-free hotline, allowing the public to telephone their comments to NRC on the amendment request.

This method of prior notice for public comment is in addition to any possible individual notice of hearing. It does not affect the time available to exercise the opportunity to request a hearing, though the Commission may provide that opportunity only after the amendment has been issued, when the Commission has determined that no significant hazards consideration is involved.

The Commission has modified slightly the procedure discussed above. In emergency situations the staff does not have time to issue a notice. In exigent circumstances, the staff has to act swiftly but has some time to issue a notice, usually a **Federal Register** notice requesting public comment within 30 days but not less than two weeks. The Commission, of course, needs the cooperation of a licensee to make the system work and to act quickly. If NRC is put in a situation where it cannot issue a **Federal Register** notice for at least two weeks public comment, it will issue a media notice. It may consult with the licensee on a proposed release and on the geographical area of its coverage and, as necessary and appropriate, may inform it of the State's and the public's comments. If a system of mailgrams or overnight express is workable, the Commission may use that as opposed to a hotline; however, it has not ruled out the use of a hotline. If it does use a hotline, it may tape the conversations and may transcribe them, as necessary and appropriate, and may inform the licensee of these.

As with its provisions on emergency situations, the Commission explained in the interim final rules that it would use these procedures sparingly and that it wants to make sure that its licensees will not abuse these procedures. It stated that it will use criteria similar to the ones it uses with respect to emergency situations to decide whether it will shorten the comment period and change the type of notice normally provided. It also stated in connection with requests indicating exigent circumstances that it expects its licensees to apply for license amendments in a timely fashion. It will not change its normal notice and public comment practices where it determines that the licensee has failed to use its best efforts to make a timely application for the amendment because of negligence or in order to create the exigent circumstances so as to take advantage of the exigency provision. Whenever a licensee wants to use this provision, it must explain to the staff the reason for the exigency and why the licensee cannot avoid it; the staff will assess the licensee's reasons for failure to file an application sufficiently in advance of its proposed action or for its inability to take the action at some later time.

The staff could also receive an amendment request with respect to which it finds that it is in the public interest to offer an opportunity for a prior hearing. In this case, it would use its present individual notice procedure to allow for hearing requests. Whether or not a hearing is held, it would notify the public about the final disposition of the amendment in an individual **Federal Register** notice of issuance or denial.

It should also be re-emphasized that these procedures normally only apply to license amendments. The staff may, under existing §§ 2.202(f) and 2.204, make a determination that the public health, safety, or interest requires it to order the licensee to act without prior notice for public comment or opportunity for a hearing. In this case, the staff would follow its present procedure and publish an individual notice of issuance in the **Federal Register** and provide an opportunity for a hearing on the order.

The new system has changed only the Commission's noticing practices, not its hearing practices. The Commission explained in the two interim final rules that it has attempted to provide noticing procedures that are administratively simple, involve the least cost, do not entail undue delay, and allow a reasonable opportunity for public comment; nevertheless, it is clear that they are burdensome and involve resource impacts and timing delays for the Commission and for licensees requesting amendments. Licensees can reduce these delays under the procedures by providing to the Commission their timely and carefully prepared appraisals on the issue of significant hazards, and the staff can further reduce delay by processing requests expeditiously.

B. State Consultation

As noted above, Pub. L. 97-415 requires the Commission to consult with the State in which the facility involved is located and to promulgate regulations which prescribed procedures for such consultation on a determination that an amendment to an operating license involves no significant hazards consideration. The Conference Report, cited earlier, stated that the conferees expect that the procedures for State consultation would 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 conferees recognize that a very limited number of truly exceptional 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 or derating of a power plant. Conf. Rep. No. 97-884, 97th Cong., 2d Sess., at 39 (1982).

The law and its legislative history were quite specific. Accordingly, the Commission adopted the elements described in the Conference Report quoted above in those cases where it makes a proposed determination on no significant hazards consideration. The Commission has decided to retain this procedure. Normally, the State consultation procedures works as follows. To make the State consultation process simpler and speedier, under the interim final rules the Commission has required an applicant requesting an amendment to send a copy of its appraisal on the question of no significant hazards to the State in which the facility involved is located. (The

NRC compiled a list of State officials who were designated to consult with it on amendment requests involving no significant hazards considerations; it made this list available to all it licensees with facilities covered by § 50.21(b) or § 50.22 or with testing facilities.)

The staff sends its **Federal Register** notice, or some other notice in the case of exigent circumstances, containing its proposed determination to the State official designated to consult with it together with a request to that person to contact the Commission if there is any disagreement or concern about its proposed determination. If it does not hear from the State in a timely manner, it concludes that the State has no interest in its determination. In this regard, the staff made available to the designated State officials a list of its Project Managers and other personnel whom it has designated to consult with these officials. Nevertheless, to insure that the State is aware of the amendment request and that it is really not interested, the final rule has been clarified to point out that the Commission will make a reasonable effort to telephone the appropriate State official before it issues the amendment.

In an emergency situation, the staff does its best to consult with the State before it makes a final determination about no significant hazards consideration before it issues an amendment.

Finally, in light of the legislative history, though the staff gives careful consideration to the comments provided to it by the affected State on the question of no significant hazards consideration, the State comments are advisory to the Commission; the Commission remains responsible for making the final administrative decision on the amendment request; a State cannot veto the Commission's proposed or final determination. 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.

Separate Views of Commissioner Asselstine

I do not approve the Commission's final regulations implementing the "Sholly Amendment." I have two major concerns about the rule.

First, I believe that Congress did not intend that the Sholly provision be used to approve license amendments to allow the expansion of spent fuel storage, whether by reracking or by other means, prior to the completion of any requested hearing. I set out my reasons for this belief in my separate views on the interim final rule so I will not repeat them here. *See*, 48 FR 14864.

Second, the statement of considerations does not clearly describe the nature of the staff's determination of whether there are "significant hazards considerations." Failure to clarify this issue in the interim final rule led to much consternation when the Commission considered the repair of the TMI-1 steam generators. The Commission should clearly state that the determination should be whether the proposed amendment presents any new or unreviewed safety issues for consideration; the issue is not whether the staff thinks that ultimately it will be able to conclude that the amendment will present no additional risk to the public.

Regulatory Analysis

The Commission prepared a Regulatory Analysis on these amendments, when it issued the two interim final rules. It is contained in SECY-83-16B and it may be examined at the address indicated in "ADDRESSES" above. Experience to date indicates that the staff resource impacts predicted in the Analysis are low by about a factor of three. This is expected to change as experience is gained in implementing the final rule.

Backfit Statement

Under 10 CFR 50.109, the final rule is not a backfit and preparation of a backfit analysis is not necessary because the final rule imposes no requirements on licensees beyond those already imposed by the interim final rules.

Paperwork Reduction Act Statement

This final rule amends information collection requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget under approval number 3150-0011.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (Act), 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 and testing facilities. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Act or in the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. Consequently, this rule does not fall within the purview of the Act.

List of Subjects

10 CFR Part 2

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.

10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

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 10 CFR Parts 2 and 50 are published as a document subject to codification.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

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

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

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 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). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239).

Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (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) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134,

Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91-580, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.105, paragraphs (a)(4), (a)(6), and (d)(2) are revised to read as follows:

§ 2.105 Notice of proposed action.

(a) * * *

(4) An amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 of this chapter or for a testing facility, as follows:

(i) If the Commission determines under § 50.58 of this chapter that the amendment involves no significant hazards consideration, though it will provide notice of opportunity for a hearing pursuant to this section, it may make the amendment immediately effective and grant a hearing thereafter; or

(ii) If the Commission determines under § 50.58 and § 50.91 of this chapter that an emergency situation exists or that exigent circumstances exist and that the amendment involves no significant hazards consideration, it will provide notice of opportunity for a hearing pursuant to § 2.106 (if a hearing is requested, it will be held after issuance of the amendment).

* * * * *

(6) An amendment to a license specified in paragraph (a)(5) of this section, or an amendment to a construction authorization granted in proceedings on an application for such a license, when such an amendment would authorize actions which may significantly affect the health and safety of the public; or

* * * * *

(d) * * *

(2) Any person whose interest may be affected by the proceeding may file a request for a hearing or a petition for leave to intervene if a hearing has already been requested.

* * * * *

§§ 2.300-2.309 [Removed]

3. Subpart C (§§ 2.300-2.309) is removed.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

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). Sections 50.58, 50.91 and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). 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, 50.73 and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

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)).

§ 50.57 [Amended]

5. In § 50.57, paragraph (d) is removed.

6. 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, or for a testing facility.

(2) 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 therefor by any person whose interest may be affected, 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.

(3) If the Commission finds, in an emergency situation, as defined in § 50.91, that no significant hazards consideration is presented by an application for an amendment to an operating license, it may dispense with public notice and comment and may issue the amendment. If the Commission finds that exigent circumstances exist, as described in § 50.91, it may reduce the period provided for public notice and comment.

(4) Both in an emergency situation and in the case of exigent circumstances, the Commission will provide 30 days notice of opportunity for a hearing, though this notice may be published after issuance of the amendment if the Commission determines that no significant hazards consideration is involved.

(5) The Commission will use the standards in § 50.92 to determine whether a significant hazards consideration is presented by an amendment to an operating license for a facility of the type described in § 50.21(b) or § 50.22, or which is a testing facility, and may make the amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

(6) No petition or other request for review of or hearing on the staff's significant hazards consideration determination will be entertained by the Commission. The staff's determination is final, subject only to the Commission's discretion, on its own initiative, to review the determination.

7. Section 50.91 is revised to read as follows:

§ 50.91 Notice for public comment; State consultation.

The Commission will use the following procedures on an application requesting an amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility:

(a) *Notice for public comment.*

(1) At the time a licensee requests an amendment, it must provide to the Commission its reasoned analysis, using the standards in § 50.92, about the issue of no significant hazards consideration.

(2)(i) The Commission may publish in the **Federal Register** under § 2.105 an individual notice of proposed action for an amendment for which it makes a proposed determination that no significant hazards consideration is involved, or, at least once every 30 days, publish a periodic **Federal Register** notice of proposed actions which identifies each amendment issued and each amendment proposed to be issued since the last such periodic notice, or it may publish both such notices.

(ii) For each amendment proposed to be issued, the notice will (A) contain the staff's proposed determination, under

the standards in § 50.92. (B) provide a brief description of the amendment and of the facility involved. (C) solicit public comments on the proposed determination, and (D) provide for a 30-day comment period.

(iii) The comment period will begin on the day after the date of the publication of the first notice, and, normally, the amendment will not be granted until after this comment period expires.

(3) The Commission may inform the public about the final disposition of an amendment request for which it has made a proposed determination of no significant hazards consideration either by issuing an individual notice of issuance under § 2.106 of this chapter or by publishing such a notice in its periodic system of **Federal Register** notices. In either event, it will not make and will not publish a final determination on no significant hazards consideration, unless it receives a request for a hearing on that amendment request.

(4) Where the Commission makes a final determination that no significant hazards consideration is involved and that the amendment should be issued, the amendment will be effective upon issuance, even if adverse public comments have been received and even if an interested person meeting the provisions for intervention called for in § 2.714 of this chapter has filed a request for a hearing. The Commission need hold any required hearing only after it issues an amendment, unless it determines that a significant hazards consideration is involved in which case the Commission will provide an opportunity for a prior hearing.

(5) Where the Commission finds that an emergency situation exists in that failure to act in a timely way would result in derating or shutdown of a nuclear power plant, or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, it may issue a license amendment involving no significant hazards consideration without prior notice and opportunity for a hearing or for public comment. In such a situation, the Commission will not publish a notice of proposed determination on no significant hazards consideration, but will publish a notice of issuance under § 2.106 of this chapter, providing for opportunity for a hearing and for public comment after issuance. The Commission expects its licensees to apply for license amendments in timely fashion. It will decline to dispense with notice and comment on the determination of no significant hazards consideration if it determines that the licensee has abused the emergency provision by failing to make timely application for the amendment and thus itself creating the emergency. Whenever an emergency situation exists, a licensee requesting an amendment must explain why this emergency situation occurred and why it could not avoid this situation, and the Commission will assess the licensee's reasons for failing to file an application sufficiently in advance of that event.

(6) Where the Commission finds that exigent circumstances exist, in that a licensee and the Commission must act quickly and that time does not permit the Commission to publish a **Federal Register** notice allowing 30 days for prior public comment, and it also determines that the amendment involves no significant hazards considerations, it:

(i)(A) Will either issue a **Federal Register** notice providing notice of an opportunity for hearing and allowing at least two weeks from the date of the notice for prior public comment; or

(B) Will use local media to provide reasonable notice to the public in the area surrounding a licensee's facility of the licensee's amendment and of its proposed determination as described in paragraph (a)(2) of this section, consulting with the licensee on the proposed media release and on the geographical area of its coverage;

(ii) Will provide for a reasonable opportunity for the public to comment, using its best efforts to make available to the public whatever means of communication it can for the public to respond quickly, and, in the case of telephone comments, have these comments recorded or transcribed, as necessary and appropriate;

(iii) When it has issued a local media release, may inform the license of the public's comments, as necessary and appropriate;

(iv) Will publish a notice of issuance under § 2.106;

(v) Will provide a hearing after issuance, if one has been requested by a person who satisfies the provisions for intervention called for in § 2.714 of this chapter;

(vi) Will require the licensee to explain the exigency and why the licensee cannot avoid it, and use its normal public notice and comment procedures in paragraph (a)(2) of this section if it determines that the licensee has failed to use its best efforts to make a timely application for the amendment in order to create the exigency and to take advantage of this procedures.

(7) Where the Commission finds that significant hazards considerations are involved, it will issue a **Federal Register** notice providing an opportunity for a prior hearing even in an emergency situation, unless it finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR Part 2.

(b) *State consultation.*

(1) At the time a licensee requests an amendment, it must notify the State in which its facility is located of its request by providing that State with a copy of its application and its reasoned analysis about no significant hazards considerations and indicate on the application that it has done so. (The Commission will make available to the licensee the name of the appropriate State official designated to receive such amendments.)

(2) The Commission will advise the State of its proposed determination about no significant hazards consideration normally by sending it a copy of the **Federal Register** notice.

(3) The Commission will make available to the State official designated to consult with it about its proposed determination the names of the Project Manager or other NRC personnel it designated to consult with the State. The Commission will consider any comments of that State official. If it does not hear from the State in a timely manner, it will consider that the State has no interest in its determination; nonetheless, to ensure that the State is aware of the application, before it issues the amendment, it will make a good faith effort to telephone that official. (Inability to consult with a responsible State offical following good faith attempts will not prevent the Commission from making effective a license amendment involving no significant hazards consideration.)

(4) The Commission will make a good faith attempt to consult with the State before it issues a license amendment involving no significant hazards consideration. If, however, it does not have time to use its normal consultation procedures because of an emergency situation, it will attempt to telephone the appropriate State official. (Inability to consult with a responsible State official following good faith attempts will not prevent the Commission from making effective a license amendment involving no significant hazards consideration, if the Commission deems it necessary in an emergency situation.)

(5) After the Commission issues the requested amendment, it will send a copy of its determinaton to the State.

(c) *Caveats about State consultation.*

(1) The State consultation procedures in paragraph (b) of this section do not give the State a right:

(i) To veto the Commission's proposed or final determination;

(ii) To a hearing on the determination before the amendment becomes effective; or

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

(2) These procedures do 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.

8. Section 50.92 is revised to read as follows:

§ 50.92 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. If the application involves the material alteration of a licensed facility, a construction permit will be issued before the issuance of the amendment to the license. If the amendment involves a significant hazards consideration, the Commission will give notice of its proposed action (1) pursuant to § 2.105 of this chapter before acting thereon and (2) as soon as practicable after the application has been docketed.

(b) The Commission will be particularly sensitive to a license amendment request that involves irreversible consequences (such as one that permits a significant increase in the amount of effluents or radiation emitted by a nuclear power plant).

(c) The Commission may make a final determination, pursuant to the procedures in § 50.91, that a proposed amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility involves no significant hazards consideration, if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(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.

Dated at Washington, DC this 28th day of February 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary for the Commission.

[FR Doc. 86-4794 Filed 3-5-86; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-99-AD; Amdt. 39-5250]

Airworthiness Directives: Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires periodic inspections of the forward lavatory drain system and corrective action, if necessary, on all Boeing 727 airplanes. This action is necessary because ice formed by leaking drain systems, when it releases from the airplane, can cause damage to or loss of an engine.

DATE: Effective April 14, 1986.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-2947. Mailing address: FAA, Seattle Aircraft Certification Office, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires periodic inspections of the forward lavoratory drain system and corrective action, if necessary, on all Boeing Model 727 airplanes was published in the Federal Register on October 21, 1985 (50 FR 42562).

The comment period for the NPRM, which ended December 9, 1985, afforded interested persons an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

A number of commenters stated that the leakage associated with lavatory drain systems is the result of inadequate or improper maintenance and/or servicing. Proper maintenance would eliminate leaks except for those resulting from debris trapped in the flush valve, and that type of problem should be caught in routine servicing. The Air Transport Association (ATA) of America, representing operators of Boeing Model 727 airplanes, noted that in the preamble to Amendment 39-106 (30 FR 8828; July 14, 1965), the FAA stated that it would not issue ADs as a substitute for enforcing maintenance rules. This statement is preceded in that preamble by the following statements:

". . . The responsibilities placed on the FAA by the Federal Aviation Act justify broadening the regulation [Part 39] to make any unsafe condition, whether resulting from maintenance, design defect, or otherwise, the proper subject of an AD. At the same time the Agency recognizes that use of ADs to correct improper or inadequate maintenance on the part of particular persons of organizations would impose an unreasonable burden on the vast majority of persons who comply with the regulations and properly maintain their aircraft."

While it is correct that proper maintenance will prevent the unsafe condition addressed by this AD from occurring, it is clear from the large number of incidents involving numerous operators that the maintenance deficiencies that result in the unsafe condition are not the sort of isolated incidents for which the issuance of an AD would be inappropriate. Rather, this is precisely the sort of situation which Amendment 39-106 was intended to address by broadening the scope of the applicability of the AD process: namely, widespread maintenance deficiencies resulting in unsafe conditions.

The Boeing Company suggested that this AD should apply only to airplanes with unmodified Monogram toilet tank flush valves. The FAA has determined that the number of "blue ice" incidents (where ice composed of lavatory waste water leaking from the lavatory drain systems and freezing on the outside of the airplane, has dislodged and impacted with the airplane itself or with buildings on the ground), in addition to the two incidents of engine loss referenced in the Notice, provide sufficient evidence of system malfunctions with modified and unmodified flush valves to warrant complete system leak checks on a periodic basis.