AA61-2 PDR

APR 0 8 1983

IDENTICAL LETTER SENT TO:

Alan Simpson, Chairman
United States Senate
cc: The Honorable Gary Hart

Richard L. Ottinger, Chairman
U.S. House of Representatives
cc: The Honorable Carlos Moorhead

The Honorable Morris K. Udall, Chairman
Subcommittee on Energy and the Environment
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Commission is preparing to adopt amendments to its "Rules of Practice for Domestic Licensing Proceedings" in 10 C.F.R. Part 2 and to its regulations in 10 C.F.R. Part 50, "Domestic Licensing of Production and Utilization Facilities," to reflect Public Law 97-415, enacted on January 4, 1983, authorizing the Commission to issue temporary operating licenses.

The legislation also directs the Commission to promulgate, within 90 days of enactment, regulations which establish (a) standards for determining whether an amendment to an operating license involves no significant hazards consideration, (b) criteria for providing or, in emergency situations, for dispensing with prior notice and opportunity for public comment on such a determination, and (c) procedures for consultation on such a determination with the State in which the facility involved is located.

To implement this legislation, the Commission has prepared the enclosed regulations for publication in the Federal Register. The statements of consideration describe and explain the regulations in detail. A public announcement is also enclosed.

Sincerely,

cc: Rep. Manuel Lujan

Guy H. Cunningham, III
Executive Legal Director

Enclosures:
As stated

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
Office of Public Affairs
Washington, D.C. 20555

No. 83-58
Tel. 301/492-7715

FOR IMMEDIATE RELEASE
(Thursday, April 7, 1983)

NRC TAKES STEPS TO IMPLEMENT NEW PUBLIC LAW

The Nuclear Regulatory Commission is taking steps to implement provisions of a recently enacted Public Law 97-415 that: (1) authorizes the Commission to issue temporary operating licenses, and (2) clarifies the agency's authority to issue operating license amendments involving no significant hazards considerations before the conduct of any public hearing.

The temporary operating license authority was requested by the Commission in March 1981 when it appeared that--because licensing reviews had been suspended largely in order to assess the lessons learned from the Three Mile Island accident--some nuclear power plants might be ready for fuel loading and the start of operations before all of the NRC's requirements for issuance of an operating license, including any public hearing, had been completed. The costs of such delays were estimated to be in the range of tens of millions of dollars per month for any delayed plant.

Under proposed amendments to Parts 2 and 50 of the NRC's regulations, an applicant for an operating license would be able to make a written request to the Commission for a temporary operating license authorizing fuel loading, testing and operation at a specified power level (initially not to exceed five percent of the reactor's rated thermal power level). Higher specified power levels could be requested later.

The written request, and supporting affidavits, could not be filed until the NRC staff has issued its Final Environmental Statement and its initial Safety Evaluation Report and the independent Advisory Committee on Reactor Safeguards has supplied its views and the staff has responded to those views in a supplemental Safety Evaluation Report. In addition, a State, local or utility emergency plan would have to be on file.

Provisions also would be made for giving prompt public notification of a request for a temporary operating license and amendments to such a license and for a 30-day comment period. The changes to the regulations, however, would not specify a time after the 30-day comment period by which the Commission must act on a request. They only provide that the Commission would act as expeditiously as possible.

The issuance of a temporary operating license would not prejudge the outcome of any public hearing on the final operating license or the rights of any party to raise proper issues in the hearing and have those issues decided. Further, parties to any final operating license hearing, as well as the presiding Atomic Safety and Licensing Board, would be required to notify the Commission of any information made available as part of the hearing that suggests the conditions of the temporary operating license were not being met or that they were insufficient to provide reasonable assurance that the public health and safety are being protected during the period of temporary operation. Further, the Commission would use its best efforts to minimize the need for temporary operating licenses before the authority to issue them expires on December 31, 1983.

Public Law 97-415 also requires the Commission to promulgate--within 90 days of enactment of the law--regulations which establish: (1) standards for determining when an amendment to an operating license involves no significant hazards consideration; (2) criteria for providing--or for dispensing with--prior notice and public comment on such a determination; and (3) procedures for consulting on such a determination with the State in which the facility involved is located.

The enabling legislation was requested by the NRC after the U.S. Court of Appeals for the District of Columbia Circuit found, in "Sholly versus NRC," that it was improper for the agency not to provide an opportunity for a prior hearing on operating license amendments not involving significant hazards considerations. The ruling did not involve the agency's authority to issue immediately effective amendments, without prior notice or hearing, when required to protect public health and safety. However, the Commission believed it could have resulted in unnecessary disruptions or delays in the operations of nuclear power plants and could have imposed unnecessary regulatory burdens--not related to significant safety matters--on the NRC and the industry.

The standards for determining when an amendment involves no significant hazards consideration were published for public comment in March 1980 in response to an earlier petition for rulemaking. They now will become an interim final rule, except that they will not apply to amendments to construction permits where the determination about no significant hazards consideration is not applicable.

As amended, Part 50 of the NRC's regulations will define an amendment to an operating license as involving significant hazards consideration, unless a finding is made that operation of the facility with the amendment would not:

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

(2) Create the possibility of a new or different kind of accident from any previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

Unless the Commission finds that an amendment involves no significant hazards consideration, prior notice and opportunity for a public hearing will be provided.

Examples of both kinds of amendments are included in the rule; however, reracking of spent fuel pools is not included in the list of those amendments that will be considered likely to involve a significant hazard consideration.

It has been the Commission's past practice to provide prior notice and opportunity for prior hearing on those amendments and, in view of expressions of Congressional understanding that the practice would be continued, the Commission has determined that the matter requires further study.

Accordingly, the staff has been directed to prepare, by August 1 this year, a report which: (1) reviews the agency's experience to date with respect to spent fuel pool expansion reviews; and (2) provides a technical judgment on the basis on which a spent fuel pool expansion amendment may or may not pose a significant hazards consideration. When this report has been completed, the Commission intends to reconsider this portion of the rule.

In the meantime, the question of whether a reracking application involves a significant hazards consideration will be determined on a case-by-case basis. If it does, an opportunity for prior hearing will be offered.

To meet the requirement for establishing criteria for providing--or for dispensing with--prior notice and public comment on operating license amendments involving no significant hazards considerations, the Commission is proposing to amend Parts 2 and 50 of its regulations.

As proposed, the Commission would publish monthly or individually in the Federal Register prior notices of (1) proposed action providing an opportunity for a hearing on applications requesting amendments to operating licenses, (2) proposed determinations on no significant hazards consideration with a request for comments within 30 days or some lesser period, and (3) final issuances. The Commission could make an amendment effective even though an interested person has requested a hearing -- a required hearing would normally be held after issuance of an amendment. Provisions also would be made for issuing such amendments without prior notice if prompt action were required to avoid derating or shutting down a nuclear power plant. The Commission's authority to impose amendments without prior notice or public hearing in order to protect the public health and safety also would be preserved.

In addition, proposed amendments to Part 50 would set forth procedures for consulting with States on amendments involving no significant hazards considerations.

As proposed, the procedures would require that: (1) a licensee notify the State of its request for an amendment and its evaluation of the issue of no significant hazards consideration; (2) the NRC send its proposed determination on whether the licensee amendment involves no significant hazards consideration to the State; (3) the NRC listen to and consider comments, if any, from a designated State official; and (4) that the NRC make a good faith effort to consult with the State before issuing the license amendment.

The procedures would not: (1) give the State a right to veto a proposed NRC determination; (2) give the State a right to a hearing before the amendment becomes effective; (3) give the State the right to insist on a postponement of the NRC determination or issuance of the amendment; or (4) alter the provisions of existing law that give the NRC exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

The separate and additional views of individual Commissioners on the interim and proposed amendments are included in the notice published in the Federal Register on April 6.

The interim amendments to Part 50 with respect to standards on no significant hazards consideration will become effective on May 6, 1983. In addition, comments on these effective amendments and on the proposed amendments to Parts 2 and 50 are invited. They should be submitted by May 6, 1983 and should be addressed to the Secretary of the Commission, Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

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10 CFR Part 50

Standards for Determining Whether License Amendments Involve No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim final rule.

SUMMARY: Pursuant to Public Law 97–415, NCR is amending its regulations to specify standards for determining whether requested amendments to operating licenses for certain nuclear power reactors and testing facilities involve no significant hazards considerations. These standards will help NRC in its evaluations of these requests. Research reactors are not covered. However, the Commission is reviewing the extent to which and the way such standards should be applied to research reactors.

EFFECTIVE DATE: May 6, 1983. The Commission specifically requests comments on this interim final rule by May 6, 1983. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Written comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of the documents discussed in this notice and of the comments received on the proposed rule and interim final rules may be examined in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C.

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

SUPPLEMENTARY INFORMATION:

Introduction

Pursuant to Public Law 97–415, NRC must promulgate, within 90 days of enactment, regulations which establish (a) standards for determining whether an amendment to an operating license involves no significant hazards considerations, (b) criteria for providing or, in emergency situations, for dispensing with prior notice and reasonable opportunity for public comment on any such determination, and (c) procedures for consultation on any such determination with the State in which the facility involved is located.

Proposed regulations to specify standards for determining whether amendments to operating licenses or construction permits for facilities licensed under §§ 50.21(b) or 50.22 (including testing facilities) involve no significant hazards considerations (item (a) above) were published for comment in the Federal Register by the Commission on March 28, 1980 (45 FR 20491). Since the Commission rarely issues amendments to construction permits and has never issued a construction permit amendment involving a significant hazards consideration, it has decided not to apply these standards to amendments to construction permits and to handle these case-by-case. This is in keeping with the legislation which applies only to operating license amendments. Additionally, these standards will not now be applied to research reactors. The Commission is currently reviewing whether and how it should apply these or similar standards to research reactors. In sum, the interim final rule will amend Part 50 of the Commission's regulations to establish standards for determining whether an amendment to an operating license involves no significant hazards consideration.

The rule takes account not only of the new legislation but also the public comments received on the proposed rule. For the sake of clarity, affected prior legislation as well as the Commission's regulations and practice are discussed as background information.

Simultaneously with the promulgation of these standards in § 50.92, the Commission is publishing an interim final rule which contains criteria for providing or, in emergency situations, for dispensing with prior notice and reasonable opportunity for and public comment on a determination about whether an amendment to an operating license involves a significant hazards consideration (item (b) above). This rule also specifies procedures for consultation on any such a determination with the State in which the facility involved is located (item (c) above). The rule appears separately in the Federal Register.

These regulations are issued as final, though in interim form, and comments will be considered on them. They will become effective 30 days after publication in the Federal Register. Accordingly, interested persons who wish to comment are encouraged to do so at the earliest possible time, but not later than 30 days after publication, to permit the fullest consideration of their views.

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 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. Public Law 85–256 (71 Stat. 576) amending § 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, at 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 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 Regulations 50.59. H. Rep. No. 1966, 87th Cong., 2d. Sess., at 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, now provides that, upon thirty-days' notice published in the Federal Register, the Commission may issue an operating license, or an amendment to an operating license, or an amendment to a construction permit, for a facility licensed under sections 103 or 104b. of the Act, or for a testing facility licensed under section 104c., without a public hearing if no hearing is requested by any interested person. Section 189a. also permits the Commission to dispense with such thirty-days' notice and Federal Register publication with respect to the issuance of an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration. These provisions have been incorporated into §§ 2.105, 2.106, 50.58(a) and (b) and 50.91 of the Commission's regulations.

The regulations provide for prior notice of a "proposed action" on an application for an amendment when a determination is made that there is a significant hazards consideration and provide an opportunity for interested members of the public to request a hearing. *See* §§ 2.105(a)(3) and 50.91. Hence, if a requested license amendment is found to involve a significant hazards consideration, the amendment would not be issued until after any required hearing is completed or after expiration of the notice period. In addition, § 50.58(b) further explains 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.

Thus, it is very important to note that a determination that a proposed license amendment does or does not present a "significant hazards consideration" has involved the hearing and attendant notice requirements. Consequently, under its present rules the Commission has generally coupled its determination about whether it should provide a hearing before issuing an amendment with its determination about whether it should issue a prior notice, and the central factor in both determinations has been the determination about "no significant hazards consideration." It has been charged that in practice this has meant that the staff has sometimes coupled the decision about the merits of an amendment to the decision about when it should notice the amendment, *i.e.*, whether it should give prior notice or post notice. Additionally, there has been some concern that the Act and the regulations have not defined the term "significant hazards consideration" and that they have not established criteria for determining when a proposed amendment involves a "significant hazards consideration." Section 50.59 does set forth criteria for determining when a proposed change, test or experiment involves an "unreviewed safety question," but it is clear that not every such question involves a "significant hazards consideration." In any event, 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, have occurred after the amendment was issued.

It is very important to bear in mind that there is not intrinsic safety significance to the "no significant hazards consideration" standard. Whether or not an action requires prior notice, 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). Also, whether or not an amendment entails prior notice, no amendment to any license may be issued unless it conforms to all applicable Commission safety standards. Thus, the "no significant hazard consideration" standard has been a procedural standard only, governing whether public notice of a proposed action must be provided, before the action is taken by the Commission. In short, the "no significant hazards consideration" standards has been a notice standard and has had no substantive safety significance, other than that attributable to the process of prior notice to the public and reasonable opportunity for a hearing.

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, 792 F.2d 792 (1980), *cert granted* 101 S. Ct. 3004 (1981) (*Sholly*). In that case the U.S. Court of Appeals for the District of Columbia Circuit ruled that, under section 189a of the Act, NRC must hold a prior hearing before an amendment to an operating license for a nuclear power plant can become effective, if there has been a request for hearing (or an expression of interest in the subject matter of the proposed amendment which is sufficient to constitute a request for a hearing). A prior hearing, said the Court, is required even when NRC has made a finding that a proposed amendment involves no significant hazards consideration and has determined to dispense with prior 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. The Supreme Court has remanded the case to the Court of Appeals with instructions to vacate it if it is moot and, if it is not, to reconsider its decision in light of the new legislation.

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, and 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, 428 (D.C. Cir. 1974), where the Court stated that, "Under its procedural regulations it is not unreasonable for the Commission to require that the prospective intervenor first specify the basis for this request for a hearing."

However, 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. The commission believes that, since most requested license amendments involving no significant hazard consideration are routine in nature, prior hearing on such amendments could result in unwarranted disruption or delay in the operations of nuclear plants and could impose regulatory burdens upon it and the nuclear industry that are not related to significant safety matters. Subsequently, on March 11, 1981, the Commission submitted proposed legislation to Congress (introduced as S. 912) that would expressly authorize it to issue a license amendment before holding a hearing requested by an interested person, when it has made a determination that no significant hazards consideration is 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 Public Law 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 hazard consideration:

(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 amendment 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 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 consideration, even though NRC has before it a request for a hearing from an interested person. At the same time, however, the legislative history makes it clear that Congress expects NRC to exercise its authority only in the case of amendments not involving significant safety questions. 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. *Id.*, at 37.

In this regard, the Senate 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. S. Rep. No. 97–113, 97th Cong., 1st Sess. at 14 (1981).

It should be also noted, in light of the previous discussion about the coupling of the decision on the merits of an amendment with the decision about when to notice the amendment, that Section 12 of Public Law 97–415, by providing for prior public notice and comment, in effect uncouples the determination about prior versus post notice from the determination about whether to issue an amendment.

In sum, the Commission is promulgating as an interim final rule the proposed standards in § 50.92 for determining whether an amendment to an operating license involves no significant hazards consideration, and it is publishing separately an interim final rule to establish (a) procedures for noticing operating license amendment requests for an opportunity for a hearing, (b) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any proposed determination on no significant hazards consideration, and (c) procedures for consulting with the requisite State on any such determination.

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

A. Petition and Proposed Rule

The Commission's interim final rule on standards for determining whether an amendment involves no significant hazards consideration completes its actions on the notice of proposed rulemaking (discussed above), which was issued in response to a petition for rulemaking (PRM 50–17) submitted by letter to the Secretary of the Commission on May 7, 1976, Mr. Robert Lowenstein. For the reasons discussed below, the petition is denied. However, the Commission is promulgating standards, as intended by the petitioner, though not the standards petitioned for. (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). The staff's recommendations on the interim final rule 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, N.W. Washington, D.C.)

The petitioner requested that 10 CFR Part 50 of the Commission's regulations be amended with respect to the procedures for issuance of amendments to operating licenses for production and utilization facilities. The petitioner's proposed amendments to the regulations would have required that the staff take into consideration (in determining whether a proposed amendment to an operating license involves no significant hazards consideration) whether operation of the plant under the proposed license amendment would (1) substantially increase the consequences of a major credible reactor accident or (2) decrease the margins of safety substantially below those previously evaluated for the plant and below those approved for existing licenses. Further, the petitioner proposed that, if the staff reaches a negative conclusion about both of these standards, the proposed amendment must be considered not to involve a significant hazards consideration.

In issuing the proposed rule, the Commission sought to improve the licensing process by specifying in the regulations standards on the meaning of no significant hazards consideration. These standards would have applied to amendments to operating licenses, as requested by the petition for rulemaking, and also to construction permits, to whatever extent considered appropriate. As mentioned before, the Commission now believes that these standards should not be applied to amendments to construction permits, not only because construction permits do not normally involve a significant hazards consideration but also because such amendments are very rare; the proposed rule has been modified accordingly. Additionally, the Commission is reviewing the extent to which and the way standards should be applied to research reactors. The Commission will handle case-by-case any amendments requested for construction permits or for research reactors with respect to the issue of significant hazards considerations.

In the statement of considerations which accompanied the proposed rule, the Commission explained that it did not agree with the petitioner's proposed standards because of the limitation to "major credible reactor accidents" and the failure to include accidents of a type different from those previously evaluated.

During the past several years the Commission's staff has been guided, in reaching its determinations with respect to no significant hazards consideration, by standards very similar to those now described in this interim final rule as well as by examples of amendments likely to involve, and not likely to involve, significant hazards considerations. These have proven useful to the staff, and the Commission employed them in developing the proposed rule. The notice of proposed rulemaking contained standards proposed by the Commission to be incorporated into 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, they had to be used together with standards in determining whether or not a proposed amendment involved significant hazards considerations.

The three standards proposed in the notice of proposed rulemaking were whether the license amendment would: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any evaluated previously, or (3) involve a significant reduction in a margin of safety.

Before responding to the specific comments on the proposed rule, it should be noted again that it was structured so that the three standards would have been used to decide not only whether the Commission would publish prior notice of an amendment request (as opposed to notice after the amendment was issued) but also to decide whether to grant an opportunity for hearing before issuance of the amendment (as opposed to granting the opportunity after issuance). As explained before, the standards were not meant to be used to make the ultimate decision about whether to issue an amendment—that final decision is a public health and safety judgment on the merits, not to be confused with the decisions on notice and reasonable opportunity for a hearing.

As a result of the legislation, under the final rule the three standards would no longer be used to make a determination about whether or not to issue prior notice of an amendment request. As fully described in the separate Federal Register notice mentioned before, the Commission has formulated separate notice and State consultation procedures that will provide in all (except emergency and some exigent) situations prior notice of amendment requests. The standards and the examples will usually be limited to a proposed determination and, when a hearing request is received, to a final 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. The decision about whether or not to issue an amendment is meant to remain one that, as a separate matter, is based on public health and safety.

B. Comments on the Proposed Rule

1. *General.* Nine persons submitted comments on the petition for rulemaking and nine persons submitted comments on the proposed amendments. The comments on the petition are in SECY-79-660. The comments on the proposed rule are in SECY file PR-2, 50 (45 FR 20491). A summary of the comments and initially-proposed responses to the comments are in SECY-81-366, available for examination at the Commission's Public Document Room. In light of the legislation, the Commission has decided to make its approach more precise (as described below) and has, therefore, revised its response to the comments. The new response is found in SECY-83-16A and 83-16B.

One of the commenters stated that all three standards are unclear and useless in that they imply a level of detailed review of amendment applications far beyond what the staff normally performs. It is the Commission's considered judgment that the standards have been and will continue to be useful in making the necessary reviews. Moreover, the Commission believes that the standards when used together with the examples will enable it to make the requisite decisions. In this regard, it should be noted that Congress was more than aware of the Commission's standards and proposed their expeditious promulgation. For example, Senate Report No. 97-113, cited above, stated:

> • • • 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]. *Id.* at 18.

Similarly, the House noted:

The committee amendment provides the Commission with the authority to issue and make immediate 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 28 (1981) (Emphasis added).

A number of commenters recommended, in regard to the second criterion in the proposed rule, that a threshold level for accident consequences (for example, the limits in 10 CFR Part 100) be established to eliminate insignificant types of accidents from being given prior notice. This comment was not accepted. Setting a threshold level for accident consequences could eliminate a group of amendments with respect to accidents which have not been previously evaluated or which, if previously evaluated, may turn out after further evaluation to have more severe consequences than previously evaluated.

It is possible, for example, that there may be a class of license amendments sought by a licensee which, while designed to improve or increase safety may, on balance, involve a significant hazards consideration because they result in operation of a reactor with a reduced safety margin due to other factors or problems (*i.e.*, the net effect is a reduction in safety of some significance). Such amendments typically are also proposed by a licensee as an interim or final resolution of some significant safety issue that was not raised or resolved before issuance of the operating license—and, based on an evaluation of the new safety issue, they may result in a reduction of a safety margin believed to have been present when the liscense was issued. In this instance, the presence of the new safety issue in the review of the proposed amendment, at least arguably, could prevent a finding of no significant hazards consideration, even though the issue would ultimately be satisfactorily resolved by the issuance of the amendment. Accordingly, the Commission added to the list of examples considered likely to involve a significant hazards consideration a new example (vii).

When the legislation described before was being considered, the Senate Committee on Environment and Public Works commented upon the Commission's proposed rule before it reported S. 1207. It stated:

The Committee recognizes that reasonable persons may differ on whether a license amendment involves a significant hazards consideration. Therefore, the Committee expects the Commission to develop and promulgate standards that, to the maximum extent practicable, draw a clear distinction between license amendments that involve a significant hazards consideration and those that involve no significant hazards consideration. The Committee anticipates, for example, that consistent with prior practice, the Commission's standards would not permit a "no significant hazards consideration" determination for license amendments to permit reracking of spent fuel pools. *Id.*, at 18.

The Commission agrees with the committee "that reasonable persons may differ on whether a license amendment involves a significant hazards consideration" and it has 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." The Commission believes that the standards coupled with the examples help draw as clear a distinction as practicable. It has decided not to include the examples in the text of the rule in addition to the original standards, but, rather, to keep them as guidelines under the standards for the use of the Office of Nuclear Reactor Regulation.

The Commission wishes licensees to note that when they consider license amendments outside the examples, the Commission may need additional time for its determination on no significant hazards considerations; thus, they should factor this information into their schedules for developing and implementing such changes to facility design and operation.

The interim final rule thus goes a long way toward meeting the intent of the legislation. In this regard, the Conference Report stated:

The conferees also expect the Commission, in promugating 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 consideration. 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).

It should be noted that the Commission has attempted to draft standards that are as useful and as clear as possible, and it has tried to formulate examples that will help in the application of the standards. These final standards are the product of a long deliberative process. As will be recalled, standards were submitted by a petition for rulemaking in 1978 for the Commission's consideration. The standards and examples are as clear and certain as the Commission can make them—and, to repeat the Conference Report, "should ensure that the NRC staff does not resolve doubtful or borderline cases with a finding of no significant hazards consideration." The Commission welcomes suggestions from the public to make them clearer and more precise, recognizing, in the Senate Committee's words, "that reasonable persons may differ on whether a license amendment involves a significant hazards consideration."

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," as will be recalled, it has been the Commission's general practice to couple the determination about prior versus post notice with the determination about provision of a prior hearing versus a hearing 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. Consequently one commenter 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. 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.

In any event, the legislation has made these comments moot by requiring separation of the criteria used for providing or dispensing with public notice and comment on no significant hazards consideration determinations from the standards used to make a determination about no significant hazards consideration. Under the legislation, the Commission's criteria for public notice and comment would not be the same as its standards on the determination about no significant hazards consideration. In fact, the Commission will normally provide prior notice (for public comment and for an opportunity for a hearing) for each operating license amendment request. (The Commission's criteria on public notice and comment are discussed in the separate Federal Register notice noted before.) Additionally, the Commission believes that use of these standards and examples will help it reach sound decisions about the issues of significant versus no significant hazard considerations and that their use would not prejudge the merits of a decision.

It holds this belief because the standards and the examples are merely screening devices for a decision about whether to hold a hearing before as opposed to after an amendment is issued and cannot be said to prejudge the Commission's final decision to issue or deny the amendment request. As explained above, that decision is a separate one, based on separate public health and safety findings.

2. *Reracking of Spent Fuel Pools.* The Commission has been providing prior notice and opportunity for prior hearing on requests for amendments involving reracking of spent fuel pools. The Commission is not prepared to say that a reracking of a spent fuel storage pool will necessarily involve a significant hazards consideration. Nevertheless, as shown by the legislative history of Public Law 97-415, section 12(a), the Congress was aware of the Commission's practice and statements were made by members of both Houses, before passage of that law, that these members thought the practice would be continued. The report on the Senate side has been quoted above; the discussion in the House is found at 127 *Cong. Record* at H 8158, Nov. 5, 1981.

The Commission is not including reracking in the list of examples that will be 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 feels that the matter deserves further study. Accordingly, the staff has been directed to prepare by August 1, 1983, a report (1) which reviews NRC experience to date with respect to spent fuel pool expansion reviews, and (2) which provides a technical judgment on the basis which a spent fuel pool expansion amendment may or may not pose a significant hazards consideration. Upon receipt and review of this report the Commission will revisit this part of the rule.

During the interim, the Commission will make a finding on the question of no significant hazards consideration for each reracking application, on a case-by-case basis, giving full consideration to the technical circumstances of the case, using the standards in § 50.92 of the rule. It is not the intent of the Commission to make a no significant hazards consideration finding for reracking based on unproven technology. However, 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. If the Commission determines that a particular reracking involves significant hazards considerations, it will provide an opportunity for a prior hearing, as explained in the separate Federal Register notice.

Additionally, it should be 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. The Commission will 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.

3. *Amendments Involving Irreversible Consequences*

The Conference Report stated:

> 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.) *Id.*, at 37-38.

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 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. *Id.* (Part III), at S. 13292.

In light of the Conference Report and colloquies quoted above, the Commission wishes to note that it will make sure "that only those amendments that clearly raise no significant hazards issues will take effect prior to a public hearing." It will do this by providing in § 50.92 of the rule that it will review proposed amendments with a view as to whether they involve irreversible consequences. In this regard, example (iii) makes clear 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 of the rule.

Finally, it is once again important to note that the examples do not cover all possible examples and may not be representative of all possible concerns. As new information is developed, the Commission will refine these examples and add new examples, in keeping with the standards in § 50.92 of the interim final rule—and, if necessary, it will tighten the standards themselves.

The Commission has left the proposed rule intact to the extent that the rule states standards with respect to the meaning of "no significant hazards consideration." The standards in the interim final rule are substantially identical to those in the proposed rule, though the attendant language in new § 50.92 as well as in § 50.58 has been revised to make the determination easier to use and understand. To supplement the standards that are being incorporated into the Commission's regulations, the guidance embodied in the examples will be referenced in the procedures of the Office of Nuclear Reactor Regulation, a copy of which will be placed in the Commission's Public Document Room.

Examples of Amendments That Are Considered Likely To Involve Significant Hazards Considerations Are Listed Below

Unless the specific circumstances of a license amendment request, when measured against the standards in § 50.92, lead to a contrary conclusion, 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.

Examples of Amendments That Are Considered Not Likely To Involve Significant Hazards Considerations Are Listed Below

Unless the specific circumstances of a license amendment request, when measured against the standards in § 50.92, lead to a contrary conclusion 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: for example, a more stringent surveillance requirement.

(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

(iv) A relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a prior review and that 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: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

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

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

Paperwork Reduction Act Statement

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

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants 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 Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. Since these companies are dominant in their service areas, this rule does not fall within the purview of the Act.

Regulatory Analysis

The Commission has prepared a regulatory ana[illegible]is on these amendmer[illegible]essing the costs and benefits [illegible]source impacts. It may be examined at the address indicated above.

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

List of Subjects in 10 CFR Part 50

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

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. 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. 3073, (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 and 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 U.S.C. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (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)).

2. In § 50.58, paragraph (b) is revised to read as follows:

§ 50.58 Hearings and report of the Advisory Committee on Reactor Safeguards.

* * * * *

(b) 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 of this part, 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 in the Federal Register of its intent to do so. 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 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. 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 considerations are involved. 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.

3. Section 50.91 is redesignated as § 50.92 and 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 prior to 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 pursuant to § 2.105 of this chapter before acting thereon. The notice will be issued 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, for example, 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 considerations, 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.

The views of Chairman Palladino and Commissioners Ahearne, Gilinsky and Asselstine follow.

Dated at Washington, D.C. this 4th day of April, 1983.

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

Chairman Palladino's Additional Views

In my opinion the Commission's decision on reracking represents its best technical judgment at this time on the generic no-significant-hazards question. That is, the Commission cannot say that reracking, as a general matter, would or would not involve a significant hazards consideration. The technical considerations of reracking proposals can vary significantly from one to another.

It was this latter fact, as well as the statements made in the Congress on reracking, that caused me to vote for the staff to study the technical basis for judgments about the hazards considerations presented by particular reracking applications.

I also believe that we may have cleared up one of the Congressional concerns about reracking by stating that it is not our intent to make a no-significant-hazards-consideration finding for reracking based on unproven technology.

Additional Comments of Commissioner Ahearne

There have been several complaints that the criteria for determining when an amendment involves significant hazards considerations are unclear or difficult to apply. For example, in the current notice the Commission notes that a commenter on the proposed rule stated the standards are "unclear and useless in that they imply a level of detailed review of amendment applications far beyond what the staff normally performs."[1] However, these criticisms must be considered in context.

In May 1976 a petition for rulemaking was filed which requested that criteria be specified for determining when an amendment involved no significant hazards considerations.[2] The petition was published for comment in 1976.[3] The Commission received few comments, primarily supporting or opposing criteria which had been proposed in the petition. The discussion focused on underlying philosophical/legal issues rather than specific alternative criteria.

The rulemaking then lay dormant for several years. In late 1979 the Commission addressed the matter and agreed to issue a proposed rule for public comment. The proposed rule was published March 1980.[4] As the Commission explained in that notice:

During the past several years, the Staff has been guided in reaching its findings with respect to "no significant hazards consideration" by staff criteria and examples of amendments likely to involve, and not likely to involve, significant hazards considerations. These criteria and examples have been promulgated within the Staff and have proven useful to the Staff. The Commission believes it would be useful to consider incorporating these criteria into the Commission's regulations for use in determining whether a proposed amendment to an operating license or to a construction permit of any production or utilization facility involves no significant hazards consideration.[5]

With respect to the criticism that the criteria are unclear, we have not received much assistance in developing clearer criteria despite having obtained two rounds of comment over the last seven years. For example, in the comments on the proposed rule mentioned above, NRDC and UCS simply argued: "The NRC should promulgate a rule holding that prior notice and opportunity for hearing should be provided for construction permit and operating licenses amendments in all cases except those involving no significant previously-unreviewed safety issue."[6] In addition, the debate has often become confused by differing assumptions and philosophies that are not usually clearly identified. For example, the NRDC/UCS implication of a detailed level of review arises largely because of an implicit assumption that the criteria are intended to require a merits type review. In fact, what the staff has always done, and what I believe we had in mind, was to make a preliminary judgment.

Basically, we have done the best we can. I would be willing to address any specific alternatives. However, after dealing with this for a number of years, I believe we must move ahead with what we have.

Commissioner Gilinsky's Separate Views on the Interim Final Rule Regarding Standards for Determining Whether License Amendments Involve no Significant Hazards Considerations (Amendments to 10 CFR Part 50)

April 4, 1983.

Standing by themselves, the standards which are set forth in the rule are so general that they offer no real guidance to the NRC staff. In a prior version of the rule, the Commission included, in the rule itself, some very useful examples of which amendments do and do not involve a significant hazards consideration. In the final version, these examples have been downgraded to the preamble of the rule where they will be of little or no legal consequence and where, as a practical matter, they will be inaccessible to anyone but the NRC historian. This diminishes the value of the rule so much that I can no longer approve it.

The earlier version of the rule placed amendments authorizing substantial spent fuel pool expansions in the significant hazards consideration category. The Commission should have retained this categorization which is consistent with the terms of the rule. Moreover, the Commission should not have ignored the strong public and Congressional views which have been expressed on this point, most recently by Senators Simpson, Hart, and Mitchell. I am in agreement with Commissioner Asselstine's analysis of the legislative record underlying this provision.

Additional Views of Commissioner Asselstine

I strongly disagree with the Commission majority's decision to permit the use of the "Sholly amendment" authority contained in section 12 of Public Law 97-415, the NRC Authorization Act for fiscal years 1982 and 1983, for license amendments for the reracking of a spent fuel pool.

The Commission majority's interim final rule would change the Commission's longstanding and consistent policy of requiring that any requested hearing on a license amendment for the reracking of a spent fuel pool be completed prior to granting the license amendment. Although the Commission has considered and approved a large number of spent fuel pool reracking amendments in the past, it has never used the no significant hazards consideration provisions in section 189 a. of the Atomic Energy Act of 1954 as a basis for approving the amendment before the completion of a requested hearing.

It is clear to me from the legislative history of section 12 of Public Law 97-415 that the Congress did not intend that the authority granted by section 12 should be used to approve reracking amendments prior to the completion of any requested hearing. The Sholly amendment was first included in the NRC authorization bill for fiscal years 1982 and 1983 by the Senate Committee on Environment and Public Works. The report of that Committee on the bill (Senate Report 97-113) makes it abundantly clear that the Committee did not intend the Sholly amendment to be used by the Commission to approve reracking amendments in advance of the completion of a requested hearing. Although the report of the Conference Committee on the bill did not repeat this admonition, there is no evidence to indicate a contrary view by the House-Senate conferees on the bill or by the two House Committees that considered the legislation.

Moreover, I believe that the use of the Sholly amendment authority to approve reracking amendments before the completion of any required hearing goes far beyond the justification offered by the Commission when it requested the Sholly amendment. In

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[1] This refers to: "Comments by the Natural Resources Defense Council and the Union of Concerned Scientists on Proposed amendments to 10 CFR Parts 2 and 50: No Significant Hazards Consideration" at 8 (May 23, 1980) (comment 3, PR-2.50 (45 FR 20491)).

[2] The petition was filed May 7, 1976 by Mr. Robert Lowenstein on behalf of Boston Edison Company, Florida Power and Light Company, and Iowa Power Company.

[3] 41 FR 24008 (June 14, 1976).

[4] 45 FR 20491 (March 28, 1980).

[5] *Id.* at 20492.

[6] *Id.* At 11. 10 CFR 50.59 deems actions to be an "unreviewed safety question":

"(i) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased; or (ii) if a possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created; or (iii) if the margin of safety as defined in the basis for any technical specification is reduced."

NRDC/UCS did not propose an alternate definition to be used with their proposal. It is interesting to note the substantial similarity to the significant hazards consideration test.

requesting the enactment of the Sholly amendment, the Commission described in some detail the situations in which it foresaw the need for this authority. The Commission emphasized the need for a large number of unforeseen and unanticipated changes to the detailed technical specifications in the operating licenses for nuclear powerplants that arise each year through such activities as refueling of the plant. The Commission argued that the need to hold a hearing on each of these changes, if one is requested, would be burdensome to the Commission and could disrupt the operation of a number of plants. In order to avoid this problem, the Commission asked the Congress to reinstate the authority that the Commission had exercised in similar situations since 1962. A reracking amendment is substantially different from the situations described by the Commission in requesting the Sholly amendment, because the need for reracking can be anticipated, because reracking involves a substantial physical modification to the plant and because of the significance attached to reracking by State and local officials and by the public.

Finally, I believe that there are strong public policy reasons for continuing the Commissions past practice of completing hearings on reracking amendment proposals before approving the amendment. These public policy reasons include the strong interest and concern on the part of State and local governments and the public regarding reracking proposals and the extent to which proceeding with reracking in advance of the hearing may prejudice the later consideration of other alternatives to the proposed reracking plan.

For these reasons, as a matter of policy, I would not permit the use of the Sholly amendment authority to approve reracking amendments prior to the completion of any requested hearing. I would therefore have added a provision to the Commission's interim final rule that would have required, as a policy matter, the completion of any requested hearing on a spent fuel pool reracking amendment before Commission approval of the amendment.

[FR Doc. 83-9062 Filed 4-5-83; 8:45 am]
BILLING CODE 7590-01-M

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10 CFR Parts 2 and 50

Notice and State Consultation

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim final rule.

SUMMARY: Pursuant to Public Law 97-415, NRC is amending its regulations (1) to provide procedures under which normally it would give prior notice of opportunity for a hearing on applications it receives to amend operating licenses for nuclear power reactors and testing facilities (research reactors are not covered) 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 in emergency situations, and (3) to furnish procedures for consultation on any such determinations with the State in which the facility involved is located. These procedures will 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.

DATE: Effective date: May 6, 1983. The Commission invites comments on this interim final rule by May 6, 1983. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Written comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received on the amendments as well as on the Regulatory Analysis proposed in connection with the amendments may be examined in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C.

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

SUPPLEMENTARY INFORMATION:

Introduction

Public Law 97-415, signed on January 4, 1983, among other things, directs 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 on such a determination with the State in which the facility involved is located. *See* Conf. Rep. No. 97-884, 97th Cong., 2d Sess. (1982). The legislation also authorizes NRC to issue and make immediately effective an amendment to a license, upon a determination that the amendment involves no significant hazards consideration (even though NRC has before it a request for a hearing by an interested person) and in advance of the holding and completion of any required hearing. This rulemaking and request for comments responds to the statutory directive that NRC expeditiously promulgate regulations on items (b) and (c) above. NRC is also publishing separately in the **Federal Register** interim final regulations on item (a) above.

These regulations are issued, as final though in interim form, and comments will be considered on them. They will become effective 30 days after publication in the **Federal Register**. Accordingly, interested persons who wish to comment are encouraged to do so at the earliest possible time, but not later than 30 days after publication, to permit the fullest consideration of their views.

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 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. Public Law 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 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 Regulations 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, now provides that, upon thirty-days' notice published in the Federal Register, the Commission may issue an operating license, or an amendment to an operating license, or an amendment to a construction permit, for a facility licensed under sections 103 or 104b. of the Act, or for a testing facility licensed under section 104c., without a public hearing if no hearing is requested by any interested person. Section 189a. also permits the Commission to dispense with such thirty-days' notice and Federal Register publication with respect to the issuance of an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration. These provisions have been incorporated into §§ 2.105, 2.106, 50.58(a) and (b) and 50.91 of the Commission's regulations.

The regulations provide for prior notice of a "proposed action" on an application for an amendment when a determination is made that there is a significant hazards consideration and provide an opportunity for interested members of the public to request a hearing. *See* §§ 2.105(a)(3) and 50.91. Hence, if a requested license amendment is found to involve a significant hazards consideration, the amendment would not be issued until after any required hearing is completed or after expiration of the notice period. In addition § 50.58(b) further explains 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'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 that there is no intrinsic safety significance to the "no significant hazards consideration" standard. Whether or not an action requires prior notice, 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). Also, whether or not an amendment entails prior notice, no amendment to any license may be issued unless it conforms to all applicable Commission safety standards. Thus, the "no significant hazards consideration" standard has been a procedural standard only, governing whether public notice of a proposed action must be provided, before the action is taken by the Commission. In short, the "no significant hazards consideration" standard has been a notice standard and has had no substantive safety significance, other than that attributable to the process of prior notice to the public to the public and reasonable opportunity for a hearing.

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*, 6512 F.2d 780 (1980), rehearing denied, 651 F.2d 792 (1980), *cert. granted* 101 S.Ct. 3004 (1981) (*Sholly*). In that case the U.S. Court of Appeals for the District of Columbia Circuit ruled that, under section 189a. of the Act, NRC must hold a prior hearing before an amendment to an operating license for a nuclear power plant can become effective, if there has been a request for hearing (or an expression of interest in the subject matter of the proposed amendment which is sufficient to constitute a request for a hearing). A prior hearing, said the Court, is required even when NRC has made a finding that a proposed amendment involves no significant hazards consideration and has determined to dispense with prior 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. The Supreme Court has remanded the case to the Court of Appeals with instructions to vacate it if it is moot and, if it is not, to reconsider i in light of the new legislation.

The Court of Appeals' decision did not involve and has no effect upon the Commision'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, and 10 CFR 2.202(f) and 2.204. Similarly, the Court did not alter existing law with regard to the Commission's pleading requirings, which are designed to enab the Commission to determine whether 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. *Atom Energy Commission*, 502 F.2d 424, 428 (D.C. Cir. 1974), where the Court state that, "Under its procedural regulations is not unreasonable for the Commissio to require that the prospective intervenor first specify the basis for hi request for a hearing."

However, the Commission believed that legislation was needed to change the result reached by the Court in *Sho* because of the implications of the requirement that the Commission gran a requested hearing before it could iss a license amendment involving no significant hazards consideration. Th Commission believes that, since most requested license amendments involv no significant hazards consideration routine in nature, hearings on such amendments could result in disruptio or delay in the operations of nuclear powerplants and could impose regulatory burdens upon it and the

nuclear industry that are not related to significant safety matters. Subsequently, on March 11, 1981, the Commission submitted proposed legislation to Congress (introduced as S. 912) that would expressly authorize it to issue a license amendment before holding a hearing requested by an interested person, when it has made a determination that no significant hazards consideration is 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. 97–414. 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 consideration, even though NRC has before it a request for a hearing from an interested person. At the same time, however, the legislative history makes it clear that Congress expects NRC to exercise its authority only in the case of amendments not involving significant safety questions. 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. *Id.*, at 37.

In this regard, the Senate 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. *Notice for Public Comment and for Opportunity for a Hearing.*

The Commission has decided to adopt the notice procedures and criteria contemplated by the legislation with respect to determinations about no significant hazards consideration. In addition it has decided to combine the notices for public comment on no significant hazards considerations with the notices for opportunity for a hearing, thereby, normally providing both prior notice of opportunity for a hearing and prior notice for public comment of requests it receives to amend operating licenses of facilities described in § 50.21(b) or § 50.22 or of testing facilities.

With respect to opportunity for a hearing, the Commission would amend § 2.105 to specify that it could normally issue in the Federal Register at least monthly a list of "notice of proposed actions" on requests for amendments to operating licenses. These monthly notices would provide an opportunity to request a hearing within thirty days. The Commission would also retain the option of issuing individual notices, as it sees fit. If the Commission does not receive any request for a hearing on an amendment within the notice period, it would take the proposed action when it has completed its review and made the necessary findings. If it receives such a request, it would act under a new § 50.91, which describes the procedures and criteria the Commission would use to act on applications for amendments to operating licenses involving no significant hazards considerations. (The interim final rule on "Standards for

Determining Whether License Amendments Involve No Significant Hazards Considerations," published separately in the Federal Register, redesignated the present § 50.91 as § 50.92.)

To implement the main theme of the legislation, under new § 50.91 the Commission would combine a notice of opportunity for a hearing with a notice for public comment on any proposed determination on no significant hazards consideration. Additionally, new § 50.91 would permit the Commission to make an amendment immediately effective in advance of the holding and completion of any required hearing where it has determined that no significant hazards consideration is involved. Thus, § 50.91 would build upon amended § 2.105, providing details for the system of Federal Register notices. For instance, exceptions would be made for emergency situations, where no prior notices (for opportunity for a hearing and for public comment) might be issued, assuming no significant hazards considerations are involved. In sum, this system would add a "notice for public comment" under § 50.91 to the present system of "notice of proposed action" under § 2.105 and "notice of issuance" under § 2.106. Under this new system, the Commission would require an applicant requesting an amendment to its operating license (1) to provide its appraisal on the issue of significant hazards, using the standards in § 50.92 and the examples discussed in the separate Federal Register notice, and (2), if it involves the emergency or exigency provisions, to address the features on which the Commission must make its findings. (Both points will be discussed later.)

When the Commission receives the amendment request, as described below, it would first decide whether there is an emergency or an exigency. If there is no emergency, it would then make a preliminary decision, called a "proposed determination," about whether the amendment involves no significant hazards consideration—normally, this would be done before completion of the safety analysis (also called safety evaluation). In this 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.

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

While it is awaiting public comment, the Commission would proceed with the safety analysis. In this context, the Commission wishes to note that, though the substance of the public comments could be litigated in a hearing, when one is held, neither it nor its Boards will entertain hearing requests on its actions with respect to these comments. It believes that this is in keeping with the legislation which states that public comment cannot delay the effective date of an amendment.

After the public comment period, the Commission would review the comments, consider the safety analysis, and reach its final decision on the amendment request. If it decides that no significant hazards consideration is involved, it would publish an individual "notice of issuance" under § 2.106 or publish the notice of issuance in its system of monthly Federal Register notices, and thus close the public record. Note that the Commission would not make and publish a final determination on no significant hazards consideration because such a determination is needed only if a hearing request is received and the Commission decides to make the amendment immediately effective and to provide a hearing after issuance rather than before.

If it receives a hearing request during the comment period and the Commission has decided that no significant hazards consideration is involved, it would prepare a "final determination" on that issue, make the requisite safety and public health findings, and proceed to issue the amendment. The hearing request would be treated the same way as in previous Commission practice, that is, by providing any requisite hearing after the amendment has been issued. As explained before, the legislation permits the Commission to make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person (even one that meets the provisions for intervention in § 2.714), in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved. The Commission wishes to state in this regard that any question about its staff's determinations on the issue of significant versus no significant hazards consideration that may be raised in any hearing on the amendment will not stay the effective date of the amendment.

The Commission believes that the procedure just described would be its usual way of handling license amendments, because most of these do not involve emergency or exigent situations and do not entail a determination that significant hazards consideration is involved. These three situations and other unusual ones could arise though.

Returning to the initial receipt of an application, if the Commission receives an amendment request and then determines that a significant hazards consideration is involved, it would handle this request in the same way it does now, by issuing an individual notice of proposed action and providing an opportunity for a hearing under § 2.105. The only change in its present procedure would be that it could notify the public of the final disposition of the amendment by noting its issuance or denial in the monthly Federal Register notice instead of in an individual notice.

Another possibility might be that the Commission receives an amendment request and finds 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 later 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 Commission might not necessarily be able to provide for prior notice for opportunity for a hearing or for prior notice for public comment and might therefore use its present procedure, publishing an individual notice of issuance under § 2.106 (which provides an opportunity for a hearing after the amendment is issued.) Additionally, the Commission's monthly Federal Register notice system would note the Commission's action on the amendment request and, thereby, provide an opportunity for public comment. In connection with emergency requests, the Commission expects its licensees to apply for license amendments in a timely fashion. 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 in order to create the emergency and to take advantage of the emergency provision. Whenever a threatened closure or derating is involved, the Commission expects the applicant to explain to it why this emergency situation 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.

Still another possibility might be that the Commission receives an amendment request and finds an exigency, 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."

The Commission believes that extraordinary situations 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 30 days ordinarily allowed for public comment. For instance, such a circumstance may arise where a licensee, while shutdown for a short time, wishes to add some component clearly more reliable than one presently installed or wishes to use a different method of testing some system and that method is clearly better than one provided for in its Technical Specifications. In either case, the licensee may have to request an amendment, and, if the Commission determines, among other things, that no significant hazards consideration is involved, it may wish to grant the request before the licensee starts the plant up and the opportunity to improve the plant is lost.

In circumstances such as the two just described, the Commission may use media other than the Federal Register, for example, a local newspaper published near the licensee's facility, widely read by the residents in the area surrounding the facility, to inform the public of the licensee's amendment request. In these instances, the Commission will provide the public a reasonable opportunity to comment on the proposed no significant hazards determination. To ensure that the comments are received on time, the Commission may also set up in such a situation a toll-free hotline, allowing the public to telephone their comments to NRC on the amendment request. It should be noted that this method of prior notice for public comment will be in addition to the routine notice of the amendment in the monthly Federal Register compilation or to any individual notice of hearing that may be published; it will not affect the time available to exercise one's opportunity to request a hearing, though it 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 will use these procedures sparingly and wants to make sure that its licensees will not take advantage of these procedures. Therefore, it will use criteria, somewhat similar to the ones it will use with respect to emergency situations, to decide whether it will shorten the comment period and change the type of notice normally provided. Consequently, in connection with requests indicating an exigency, the Commission 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 in order to create the exigency and to take advantage of the exigency provision. Whenever a licensee wants to use this provision, it will have to explain to the Commission the reason for the exigency and why the licensee cannot avoid it; the Commission 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.

Another different circumstance may also present itself to the Commission. For instance, it could 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 and notify the public about the final disposition of the amendment in a notice of issuance or denial in its monthly Federal Register notice, instead of in an individual notice.

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

This new system would change only the Commission's noticing practices; it would not alter the Commission's hearing practices. The Commission 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, they are quite burdensome and involve significant resource impacts and timing delays for the Commission and for licensees requesting amendments. Licensees would be able to reduce these delays, under the proposed procedures, by providing to the Commission their appraisals on the issue of significant hazards. There might also be other ways to make the noticing procedures simpler and to assure that the opportunity for public comment is not curtailed. The Commission is therefore particularly interested in comments addressing the workability of its proposed noticing procedures.

Finally, with respect to amendment requests received before the interim final rule takes effect, the Commission proposes to keep its present procedures and not provide notice for public comment on amendments requested on which the Commission has not acted before the effective date of the interim final rule.

D. State Consultation

As noted above, Public Law 97-415 requires the Commission to consult with the State in which the facility involved is located and to promulgate regulations which prescribe procedures for such consultation on a determination that an amendment to 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. *ID.*, at 38.

The Commission believes that the law and its legislative history are quite specific. Accordingly, it proposes to adopt the elements described in the Conference Report quoted above in those cases where it makes a proposed determination on no significant hazards consideration. Normally, the State consultation procedures would work as follows. To make the State consultation process simpler and speedier, the Commission would require 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 is compiling a list of State officials who have been designated to consult with it on amendment requests involving no significant hazards considerations; it intends to make this list available to all its licensees with facilities covered by § 50.21(b) or § 50.22 or with testing facilities.)

The Commission would send its Federal Register notice, or other notice in 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 will consider that the State has no interest in its determination—in this regard, the Commission intends to make available to the designated State officials a list of its Project Managers and other personnel whom it has designated to consult with these officials—but, nevertheless, before it issues the amendment, it will telephone the appropriate State official for the purpose of consultation.

In an emergency situation, the Commission would do its best to consult with the State, before it makes a final determination about no significant hazards consideration, by simply telephoning the appropriate State official before it issues an amendment.

Finally, the Commission wishes to note two points in connection with the legislative history. First, though the Commission intends to give 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 question. Second, State consultation does not alter present provisions of law that reserve to the Commission exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

Paperwork Reduction Act Statement

This rule contains a new reporting requirement which the Office of Management and Budget approved under OMB No. 3150–0011 for the Commission's use through April 30, 1985.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants 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 Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. Since these companies are dominant in their service areas, this rule does not fall within the purview of the Act.

Regulatory Analysis

The Commission has prepared a Regulatory Analysis on these amendments, assessing the costs and benefits and resource impacts. It may be examined at the address indicated above.

General notice of proposed rulemaking is not required for this interim final rule because the amendments by their nature concern rules of agency procedure and practice. Accordingly, 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.

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, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting requirements.

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.

(Sec. 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. Sections 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). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.105, paragraphs (a)(4) through (a)(8) are redesignated as paragraphs (a)(5) through (a)(9), a new paragraph (a)(4) is added, and redesignated paragraph (a)(6) is revised, 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 or for a testing facility, as follows:

(i) If the Commission determines under § 50.58 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 that an emergency or exigent situation exists and that the amendment involves no significant hazards considerations, 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 amendment would authorize actions which may significantly affect the health and safety of the public; or

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

3. 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, 68 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

(Sec. 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 U.S.C. 955 (42 U.S.C. 2236).)

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10(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)).

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

§ 50.91 Notice for public comment; State consultation.

The Commission will use the following procedures on an application received after May 6, 1983 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 analysis, using the standards in § 50.92, about the issue of no significant hazards consideration.

(2) The Commission may publish in the Federal Register under § 2.105 either an individual notice of proposed action as to which it makes a proposed determination that no significant hazards consideration is involved, or, at least once every 30 days, a monthly notice of proposed actions which identifies each amendment issued and each amendment proposed to be issued since the last such monthly notice. For each amendment proposed to be issued, either notice will (i) contain the staff's proposed determination, under the standards in § 50.92, (ii) provide a brief description of the amendment and of the facility involved, (iii) solicit public comments on the proposed determination, and (iv) provide for a 30-day comment period. 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 where it has made a proposed determination on no significant hazards consideration either by issuing an individual notice of issuance under § 2.106 or by publishing such a notice in its monthly system of Federal Register notices. In either event, it will not make and 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 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.

(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, 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 circumstance, 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, providing for opportunity for a hearing and for public comment after issuance. The Commission expects its licensees to apply for license amendments in a 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 failed to make a timely application for the amendment in order to create the emergency and to take advantage of the emergency provision. Whenever a threatened closure or derating is involved, 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 failure 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, it will:

(i) Use local media to inform the public in the area surrounding a licensee's facility of the licensee's amendment request and of its proposed determination as described in paragraph (a)(2) of this section;

(ii) 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;

(iii) Publish a notice of issuance under § 2.106, providing an opportunity for a hearing and for public comment after issuance, if it determines that the

amendment involves no significant hazards consideration.

(iv) Require an explanation from the licensee about the reason for 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 where 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 procedure.

(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 to that State a copy of its application and its analysis about no significant hazards consideration 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, before it issues the amendment it will telephone that official for the purpose of consultation.

(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 to avoid a shutdown or derating.

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

(c) *Caveats about State consultation.* The State consultation procedures in paragraph (b) of this section do not give the State a right:

(1) To veto the Commission's proposed determination;

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

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

(4) Nor do these procedures 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.

Dated at Washington, D.C., this 4th day of April, 1983.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary for the Commission.

[FR Doc. 83-9061 Filed 4-5-83; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; Doc. R-0449]

Electronic Fund Transfers; Technical Amendments and Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule and official staff interpretation.

SUMMARY: The Board is adopting technical amendments to Regulation E (Electronic Fund Transfers) to conform certain provisions that refer to Regulation Z (Truth in Lending). These changes reflect redesignated sections in revised Regulation Z. This notice also contains changes to the official staff commentary, which applies and interprets the requirements of Regulation E.

EFFECTIVE DATE: April 1, 1983.

FOR FURTHER INFORMATION CONTACT: John C. Wood or Jesse B. Filkins, Senior Attorneys, or Gerald P. Hurst, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-2412 or (202) 452-3867.

SUPPLEMENTARY INFORMATION:

1. *General.* The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) governs any transfer of funds that is electronically initiated and that debits or credits a consumer's account. This statute is implemented by the Board's Regulation E (12 CFR Part 205). The Board's staff has also issued an official commentary that interprets the regulation (EFT-2).

2. *Explanation of revisions. Regulation.* Regulation E contains certain provisions that describe the relationship between the rules governing electronic fund transfers and Regulation Z (Truth in Lending). These provisions cover: issuance of access devices, § 205.5(c)(1)(ii) and 205.5(c)(2)(i); liability for unauthorized transfers, § 205.6(d)(1)(i); documentation of transfers, § 205.9(b)(3); and procedures for resolving errors, § 205.11(i). The changes set forth below relate to the updating of Regulation Z sectional references. These changes are needed because Regulation Z sections were redesignated when the Board revised Regulation Z, pursuant to the Truth in Lending Simplification and Reform Act of 1980.

Commentary. This is the first periodic update to the Official Staff Commentary on Regulation E, which was published in September 1981 (46 FR 46876). These changes were proposed for comment on February 2, 1983 (48 FR 4967). Some of the revisions to the commentary relate to amendments to the regulation published on October 12, 1982 (47 FR 44706). Other changes respond to various questions that have arisen concerning Regulation E since the commentary was originally published. Questions that are being added between existing questions are designated ".5"—for example, question 2-5.5 belongs after question 2-5.

It is contemplated that future updates to the commentary will be published annually, unless circumstances dictate more frequent revision. The staff expects to publish the next proposal in November 1983 for a 60-day comment period, and to issue a final version in the first quarter of 1984.

List of Subjects in 12 CFR Part 205

Banks, banking, Consumer protection, Electronic fund transfers, Federal Reserve System.

3. *Text of regulatory revisions.* Pursuant to the authority granted in Section 904 of the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*), the Board amends Regulation E, 12 CFR Part 205, by revising §§ 205.5(c)(1)(ii), 205.5(c)(2)(i), 205.6(d)(1)(i), 205.9(b)(3), and 205.11(i) to refer to the revised sections of Regulation Z, to read as follows:

§ 205.5 Issuance of access devices.

* * * * *

(c) *Relation to Truth in Lending* (1)

* * *

(ii) Addition to an accepted credit card, as defined in 12 CFR 226.12(a)(2), footnote 21 (Regulation Z), of the