depends entirely upon facts within the knowledge of the Department of Agriculture. The Department has no alternatives to raising the rates. By law, importers and exporters are required to reimburse the Department for its costs associated with services rendered. A cost analysis was performed to determine if fees for overtime are adequate to recover the cost of providing the services. Unless the rates are raised, the Department will not be able to recover the costs for providing services outside regularly established hours or outside regular tours of duty hours.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find for good cause that prior notice and other public procedure with respect to this rule are impracticable, unnecessary, and contrary to the public interest; we also find good cause that this rule be made effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 97 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 97.1 is amended by revising the first sentence of paragraph (a) and the last sentence of paragraph (b) to read as follows:

§ 97.1 Overtime work at laboratories, border ports, ocean ports, and airports.

(a) Any person, firm, or corporation having ownership, custody, or control of animals, animal byproducts, or other commodities subject to inspection, laboratory testing, certification, or quarantine under this subchapter and Subchapter G of this chapter, and who requires the services of an employee of Veterinary Services on a Sunday or holiday, or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of Sunday or holiday or overtime service request the Veterinary Services inspector in charge to furnish inspection, laboratory testing, certification, or quarantine service during such overtime, or Sunday or holiday period, except as provided in paragraph (b) of this section, shall pay the Government therefor at a rate of $32.64 per work-hour per employee on a Sunday and at the rate of $24.48 per work-hour per employee for holiday or any other period; except that for any services performed on a Sunday or holiday, except as provided in paragraph (b) of this section for inspection or quarantine services requested by an owner or operator of an aircraft at an airport on a Sunday or holiday which are performed within regularly established hours of service, or at any time after 5 p.m. or before 8 a.m. on a weekday, in connection with the arrival in or departure from the United States of a private aircraft or vessel, the total amount payable shall not exceed $25 for all inspection services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture. * * *

(b) * * * When services are performed outside of the regularly established hours of service on a holiday or Sunday or any other day, the rate to be charged owners or operators of aircraft shall be $28.08 per hour on a Sunday and $21.08 per hour on a holiday or any other day, which charges exclude administrative overhead costs.

* * * * *

Done in Washington, DC, this 30th day of April, 1987.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87-10183 Filed 5-5-87; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Production and Utilization Facilities; Timing Requirements for Full Participation Emergency Preparedness Exercises for Power Reactors Prior to Receipt of an Operating License

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is amending its regulations to change the timing requirements for a full participation emergency preparedness exercise for power reactors prior to issuance of a full-power operating license (one authorizing operation above 5% of rated power of the reactor). The amendment requires a full participation exercise, including State and local governments, to be held within two years before the issuance of a full-power operating license, as opposed to the current requirement of within one year. An exercise which tests the licensee's onsite emergency plan, but which need not include State or local government participation, is still required to be held within one year before issuance of a full-power operating license.

This rule change is unrelated to the Commission's notice of proposed rulemaking that would establish criteria for the evaluation of emergency planning for nuclear plants in those situations in which a State or locality has elected not to participate in the emergency planning process.

EFFECTIVE DATE: This rule is effective on May 6, 1987.

FOR FURTHER INFORMATION CONTACT: Michael T. Jamgochian, Regulatory Applications Branch, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 443-7657.

SUPPLEMENTARY INFORMATION:

I. Background

This notice of final rulemaking will change the timing requirements for a full participation emergency preparedness exercise for power reactors prior to issuance of a full-power operating license. It is unrelated to the Commission's notice of proposed rulemaking, published in the **Federal Register** on March 6, 1987 (52 FR 6980), that would establish criteria for the evaluation of emergency planning for nuclear plants in those situations in which a State locality has elected not to participate in the emergency planning process.

The Commission published the proposed timing-requirements rule for comment on December 2, 1986 (51 FR 43369). A notice extending the 30-day comment period was published in the **Federal Register** on January 7, 1987 (52 FR 543). During the 40-day comment a total of 18 public comments were received. Nine supported the proposed rule and nine opposed it. As indicated below, the Commission has reviewed the comments and has decided to promulgate a final rule which includes a number of modifications from the one that had been proposed. The Federal Emergency Management Agency, by memorandum dated March 27, 1987, has advised the Commission of its concurrence in the final rule that is being issued here.

When the Commission decided to require a full-participation emergency planning exercise within one year prior to the licensing of a power plant, it based this scheduling decision on a balance between the desirability for an exercise close to the date of licensing in order to assess the adequacy of the emergency plan being tested and the countervailing need to avoid scheduling and resource burdens. Based on the Commission's experience since the original promulgation of the scheduling requirement the Commission now believes that it is appropriate to strike a new balance. The new rule strikes that balance by requiring a full-participation emergency planning exercise within two years prior to the licensing of a power plant, the same scheduling requirement mandated for full-participation emergency planning exercises after licensing.

Since the promulgation of its emergency planning requirements in 1980, both the Commission and the Federal Emergency Management Agency (FEMA) have gained much experience in assessing the results of, and the requirement for, full-participation exercises. Most of these exercises have been the post-licensing exercises that NRC and FEMA regulations now require to be held every two years. In setting the two-year requirement for operating plants in 1984, prior NRC and FEMA experience demonstrated that the reasonableness of emergency planning at a nuclear power plant can be fairly tested and adequately assured by a full-participation exercises which are held every two years rather than on a more frequent basis. 49 FR 27733, 27734–27735 (July 6, 1984). Similarly, the Commission has concluded that no safety requirement mandates a full-participation exercise within one year prior to plant licensing. To the extent that an offsite pre-licensing exercise is intended to reveal whether an emergency plan has fundamental flaws, that purpose can be achieved at least as well by an exercise held within two years of licensing as within one year. To the extent that the exercise is designed to test the preparedness of those individuals and organizations that must participate in offsite emergency planning, NRC and FEMA experience with post-licensing exercises has convinced us that exercises every two years, including remedial exercises when necessary, perform this function satisfactorily. Exercises on a more frequent basis are not necessary to enable the Commission to determine whether an emergency plan provides "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." 10 CFR 50.47(a).

Moreover, since the Commission's promulgation of its original requirement for a full-participation exercise within one year of the licensing of a power plant it has also become clear that the resource and scheduling burdens created by this timing requirement have proven far more onerous than originally expected. First, with the United States Court of Appeals for the District of Columbia Circuit's decision in *Union of Concerned Scientists v. NRC,* 735 F.2d 1437 (D.C. Cir. 1984), *cert. denied,* 469 U.S. 1132 (1985), it has become necessary to permit litigation in contested proceedings over the results of pre-licensing exercises. This litigation occasionally has not been completed within the year following the exercise. *See e.g., Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1). Such a delay makes it impossible to comply with the regulatory scheduling requirement and the dictates of *UCS v. NRC.* Even when the delays do not make compliance with both requirements impossible, they unnecessarily complicate both the licensing proceeding and the scheduling of the required pre-licensing exercise. Second, utilities are finding it difficult to predict the actual date when their plants will be receiving an operating license. Thus, experience is proving that it is often difficult to know precisely when the pre-licensing exercise should be scheduled to comply with the one-year requirement.

Certainly, an important indicator of this difficulty is the fact that in the last two years six plants that have been awarded operating licenses have sought and received exemptions from the scheduling requirements of the pre-licensing exercise rule. See 52 FR 713 (January 8, 1987) (Shearon Harris Nuclear Power Plant; eight-month extension); 51 FR 41035 (November 12, 1986) (Perry Nuclear Power Plant, Unit 1; eleven-month extension); 50 FR 32129 (August 8, 1985) (Limerick Generating Station, Unit 1; two-week extension); *id.* 28485 (July 12, 1986) (Enrico Fermi Atomic Power Plant, Unit 2; three-week extension); *id.* 9917 March 12, 1985) (Waterford Steam Electric Station, Unit 3; five-week extension); *id.* 5829 (February 12, 1985) (Byron Station, Unit 1; three-month extension). The frequency and circumstances surrounding these exemptions support the Commission's conclusion that the one-year scheduling requirement has proven difficult to meet and that an emergency exercise conducted more than one year before plant full-power licensing is adequate to assess the propriety of an emergency plant.

As a result of the Commission's experience with the one-year pre-licensing exercise requirements and FEMA and NRC experience with the two-year post-licensing exercise requirements, which provides for remedial exercise when necessary, the Commission has determined that its previous pre-licensing requirement for a full-participation exercise within one year of the licensing of a power plant is not necessary. The benefits of a pre-licensing exercise requirement can be fully achieved by allowing that requirement to be met within two years of the licensing of a power plant. This approach also should reduce the unnecessary scheduling and resource burdens that have become evident to the Commission based upon its experience with the one-year requirement.

II. Summary of Public Comments and Commission Responses

1. Commonwealth Edison

Summary of Comment.

Commonwealth Edison supported that portion of the proposed rule extending from one to two years the period within which the pre-operational offsite exercise must be held. However, Edison disagreed with the last two sentences of the proposed rule which require the applicant to conduct an exercise of its onsite plan if the offsite exercise is more than one year prior to issuance of the operating license. Edison argued that the additional test would be of marginal value and might tend to introduce additional issues into the operating license hearing. On this basis Edison recommended deletion of the last two sentences of the proposed rule.

Commission Response. The Commission disagrees that a pre-operational onsite exercise within one year before issuance of a full-power operating license is of marginal value. The importance of annual onsite emergency planning exercises by the licensee's operational staff has already been recognized in the Commission's regulations, which now require that after a facility is licensed to operate there must be an annual onsite exercise. This annual emergency response function drill ensures that the licensee's new personnel are adequately and promptly trained and that exisitng licensee personnel maintain their emergency response capability. The existing requirement of a pre-operational onsite exercise within one year prior to full-power license issuance is consistent with this philosophy as well as the Commission's general desire to have pre-operational emergency planning exercises as close as practicable to the time of licensing. And since, unlike the situation with offsite exercises, no one has identified any existing response or timing difficulty with the onsite requirement, we find no reason to revise the requirement at this time.

Moreover, to mandate an onsite exercise within one year of operation while requiring an offsite exercise within two years is a recognition of the distinct nature of the participants involved in each instance. The State and local emergency planning organizations that are primarily involved in offsite emergency planning are in almost all instances organized and trained to deal with emergency situations long before facility operation. While the offsite emergency test is important to judge the ability of these existing organizations to respond to the particular of a radiological emergency, in light of their ongoing responsibility for all types of emergencies a demonstration of offsite preparedness by such agencies within two years prior to licensing affords reasonable assurance of their capabilities at the time of licensing. In contrast, as an applicant makes a full-scale shift from a facility construction to a facility operation mode within the last twelve to eighteen months prior to operation, as a general rule many new operational personnel are retained who must be ready to carry out the utility's onsite emergency response responsibilities. It is also in recognition of this distinction that the Commission finds that an onsite exercise should be required within one year of licensing to provide assurance that the applicant's onsite response capabilities are adequate.

For the purposes of clarity, the Commission is revising the last two sentences, which provide that a pre-operational onsite exercise be held within one year before operation above 5% of rated power.

2. Edison Electric Institute

Summary of Comment. The Edison Electric Institute supported the proposed rule and did not suggest any changes to its text or rationale.

Commission Response. None required.

3. Hunton and Williams

Summary of Comment. This law firm filed comments on behalf of Long Island Lighting Company (LILCO). LILCO stated that it supported the amendment and agreed with the Commission's basic premise that the two-year interval was adequate to ensure an acceptable level of emergency preparedness. LILCO cited its experience with the Shoreham facility as supporting the need for the amendment, and disagreed with Commissioner Asselstine's view that the exemption process was the appropriate means to address the problem. LILCO did not offer any suggestions for changes in the proposed rule.

Commission Response. None required.

4. Marvin Lewis

Summary of Comment. Mr. Lewis opposed the proposed rule, stating that it would "weaken regulation and pose a danger to the health and safety of the public by allowing unlicensed operators more freedom to act with nuclear hazards before having proven that they can act responsibly."

Commission Response. Licensees are not being granted any additional "freedom" by this rule. The full participation exercise must still be held prior to full-power operation of the facility and a pre-operational onsite exercise will continue to be required one year prior to full-power operation. The only change is the timing of the full participation exercise.

5. Atomic Industrial Forum

The Atomic Industrial Forum (AIF) supported the proposed rule but pointed out, with respect to its last two sentences, that Section IV.F.2 of Appendix E already requires a licensee to conduct annual exercises of its mergency plan. AIF suggested that this was a redundant requirement and therefore the last two sentences of the proposed rule should be deleted.

Commission Response. The Commission disagrees that the last two sentences of the proposed rule should be deleted, but has determined to revise those sentences for purposes of clarity. (Also, in the interests of clarity, the preceding sentence is modified to specify that an operating license "for full power" is to be taken, in this context, to be "one authorizing operation above 5% of rated power." The prior reference to 5% of rated power was ambiguous.)

6. Stone & Webster Engineering Corporation

Summary of Comment. Stone & Webster supported the proposed rule and did not suggest any changes.

Commission Response. None required.

7. Seacoast Anti-Pollution League

Summary of Comment. The Seacoast Anti-pollution League (SAPL) opposed the amendment and agreed with the views of Commissioner Asselstine. SAPL argued that emergency response personnel experience fairly rapid turnover, and therefore "a full scale exercise is needed annually." SAPL did not accept the Commission's reliance on the fact that State and local governments are often called upon to respond to a variety on non-nuclear emergencies.

Commission Response. The Commission does not agree that two years between full participation exercises is unwarranted based on personnel changes. The Commission's and FEMA's rules have, since 1984, permitted the two-year cycle for full participation exercises for operating plants. The Commission's view was in 1984, and is today, that there are more beneficial uses of State and local governments' resources, such as providing for additional training and equipment, than using such resources to support an annual full participation exercise.

The Commission does not rely solely on the fact that State and local governments routinely respond to a variety of public emergencies. However, the basic principles involved in handling non-nuclear emergencies, such as evacuations due to an impending hurricane or a leak of toxic chemicals, also apply in responding to a nuclear accident. This lends support to the rule because State and local emergency response organizations are frequently called upon and must maintain a high degree of readiness independent of nuclear power plant exercises.

8. Liz Cullington

Summary of Comment. Ms. Cullington opposed the proposed rule and stated as follows:

> In extending the time period from one year to two, the NRC would be essentially handing to the utilities an across-the-board offer of total exemption from the requirement to prepare emergency response plans for reactors under licensing review, as long as an acceptable number of sheets of paper are submitted to the Commission with appropriate title pages. Under this proposed rule change, a utility could submit a xeroxed copy of Webster's Dictionary as its emergency response plan, and have no deadline for completing the plan itself, as a reality, for either exercising it, or demonstrating that it is feasible.

Commission Response. The proposed rule change is more limited in scope than the comment suggests. It does not affect either the required content of emergency plans nor the need to exercise such plans on a regular basis. The amendment only extends from one to two years the period within which the preoperational full-participation exercise must be held. All other Appendix E and 10 CFR 50.47 requirements must continue to be met as a prerequisite for issuance of an operating license, including the requirement that a pre-operational onsite exercise be held within one year before going above 5 percent of rated power.

9. Georgia Power Company

Summary of Comment. The Georgia Power Company supported the proposed rule and did not suggest changes in its text.

Commission Response. None required.

10. Nuclear Information and Research Service

Summary of Comment. The Nuclear Information and Research Service (NIRS) opposed the amendment, and stated three reasons for doing so:

1. Changes [in emergency procedures] will be more likely to occur in a new plant where last minute alterations in technical specifications, guidelines, newly trained operators, and actual equipment are common occurrences. It is precisely this kind of change which marks a new plant from an operating plant and which necessitates an exercise no more than one year prior to licensing.

2. An exercise no more than one year prior to licensing "would ensure that any new government officials or workers are familiar with the plans themselves, and are capable of carrying them out."

3. The one-year requirement has been easily satisfied in most cases, and a schedule exemption is an available option where needed.

Commission Response. Changes of the type cited by NIRS do occur prior to issuance of an operating license and throughout the life of an emergency plan. However, these changes would be addressed in the utility's emergency plan. The proposed rule retains the requirement that a pre-operational onsite exercise be held within one year before going above 5 percent of rated power.

When changes in offsite emergency procedures or offsite personnel occur, it is the responsibility of the State or local government to ensure that personnel are adequately trained to carry out their functions under the plan. The licensee is required by Commission regulations to assist in such training. *See* 10 CFR Part 50 Appendix E, Section F (introductory paragraph). The proposed rule would permit the use of a two-year cycle for the holding of a pre-operational offsite exercise. This timing would be consistent with the two-year cycle for the holding of a post-operational offsite exercise for operating plants which has been in effect since 1984.

Sound principles of administrative law dictate that where agency policy is no longer correctly reflected in its rules, rulemaking should be undertaken and public comment sought. The Commission now believes that a two-year period between full participation exercises should be used in all cases, and therefore has proceeded with rulemaking to codify this policy.

11. Union of Concerned Scientists/New England Coalition on Nuclear Pollution

Summary of Comment. The Union of Concerned Scientists (UCS) and the New England Coalition on Nuclear Pollution (NECNP) oppose the rule on the following grounds:

1. The Commission has not adequately explained its reasons for making a change in policy.

2. The proposed rule ignores a distinction previously drawn between pre- and post-operational exercises.

3. The Commission should have prepared a backfit analysis for the proposed rule.

Commission Response. The logic for the proposed rule was stated in the notice of proposed rulemaking (51 FR 43369, December 2, 1986), as follows:

The Commission in 1984 revised its emergency preparedness regulations to relax the frequency of full participation exercises by State and local governments for sites with an operating license. This was done in part because the Federal Emergency Management Agency (FEMA), based on its experience in observing and evaluating exercises, adopted a biennial, rather than an annual, requirement for full participation exercises. Under the biennial requirement adopted by the Commission, State and local governments need only participate in one full participation exercise, at any site, every two years. The Commission revised this regulation because it found that annual exercises used a disproportionate amount of Federal, State, and local government resources, and that State and local governments frequently exercised their emergency preparedness capabilities by responding to a variety of natural and man-made emergencies, such as chemical spills, on a continuing basis. The Commission concluded that biennial full participation exercises were adequate to protect public health and safety. The Commission in revising its regulations for full participation exercises retained the requirement for annual exercises of each licensee's emergency plan (49 FR 27733, July 6, 1984).

The Commission did not make a similar change regarding the required frequency of full participation exercises at sites without an operating license. Because of the opportunity in an operating license proceeding under Section 189a of the Atomic Energy Act for a hearing on the results of a full participation exercise, this requirement created some difficulty in scheduling the exercise so that it would allow time for a hearing while still being conducted within one year of plant readiness to be licensed. In 1982 the Commission adopted a rule which, by finding that emergency preparedness exercises were not required for a Licensing Board, Appeal Board, or Commission decision, would have allowed the exercise to be conducted close enough to a licensing decision to avoid this difficulty and to avoid annual pre-licensing exercises (47 FR 30232, July 13, 1982). However, the Court of Appeals for the District of Columbia Circuit vacated that rulemaking. The court held that the Commission could not remove from the hearing requirements of Section 189a of the Atomic Energy Act a material issue relevant to its licensing decision, and that the prelicensing exercise was such a material issue. *Union of Concerned Scientists v. NRC,* 735 F.2d 1437 (D.C. Cir. 1984), *cert. denied,* 105 S.Ct. 815 (1985).

The Commission has thus been left with a regulatory scheme for frequency of full participation emergency preparedness exercises that treats sites with an operating license differently than sites without an operating license. The Commission does not believe this disparity in treatment is warranted. The Commission is concerned about the burden the present rule may place on State and local governments. The requirement that those governments participate in a full participation exercise every two years is in addition to the requirement for their participation at sites without an operating license. Requiring annual participation at sites without operating licenses could thus place a significant burden on State and local government resources.

The Commission in the prior rulemaking determined that emergency preparedness would be adequate if State and local governments participated in an exercise every two years. There seems to be little reason why State and local governments nonetheless should have to participate in full participation exercises on an annual basis in the pre-licensing stage solely because a license did not issue within 365 days of the exercise. The only requirement should be that the participants be adequately in place and trained to make the exercise meaningful. This could well occur two years before issuance of an operating license. If the exercise demonstrates that preparedness was inadequate, then remedial steps, including another exercise, if appropriate, can be taken. Moreover in accord with the Commission's regulations for sites with operating licenses, applicants will still have to conduct annual exercises, *i.e.*, if the full participation exercise is held more than one year before issuance of the operating license, then the applicant must conduct an exercise of its emergency plan before license issuance. However, that latter exercise need not involve State or local governments.

UCS points out that in a 1982 rulemaking on emergency planning, the Commission remarked on the desirability of having the pre-operational exercise close in time to commercial operation. The reason stated by the Commission was that the "exercises are best held at a later time, when the operating and management staff of the plant—who are central figures in an exercise—are in place and trained in emergency functions." (47 FR 30233, July 13, 1982). As was explained earlier, the Commission continues to support this principle and has retained the requirement that an onsite exercise of the emergency plan be held within one year prior to operation above 5 percent power.

The backfit rule, 10 CFR 50.109, applies only where the Commission seeks to impose new or different requirements on licensees. It does not apply where requirements are either relaxed or deleted.

12. Wells Eddleman, et al.

Summary of Comment. Mr. Eddleman and others joining him oppose the amendment for the following reasons:

1. ". . . a one year time range before operation above 5% power is a practical maximum for giving an up to date "snap shot" assessment of the level and capability of emergency preparedness existing when the plant begins to operate."
2. One year is adequate to litigate the results of the exercise, based on the Shearon Harris proceeding.
3. ". . . nuclear accidents have a tendency to occur early in the operation of a nuclear plant . . .", citing Three Mile Island and the Browns Ferry Fire.
4. The rule is illegal because it is an attempt to deny hearing rights to intervenors in the Shearon Harris case on the exemption granted from the existing one-year requirement.

Commission Response. The Commission disagrees that a full participation exercise is needed within one year of operation to demonstrate adequate emergency preparedness. The Commission has determined that a two-year cycle for full participation exercises is sufficient for making a finding that adequate protective measures can and will be taken in the event of an accident.

The Commission has not based its acceptance of the two year requirement for holding a full participation exercise on the time needed to litigate the results of such exercise. Rather, as indicated above and in response to comment # 11, the Commission has determined that a two-year cycle is an appropriate period of time for holding full participation exercises. With regard to litigation the results of the exercise, under *UCS v NRC,* 735 F.2d 1437 (D.C. Cir. 1984), it is clear that the results of exercises are litigable in the operating license proceeding, irrespective of when those exercises are held, so long as the holding of an exercise is a pre-license requirement. However, while the two year time period provided in this rule was not premised on the time needed to litigate the results of an exercise, as was explained earlier, one of the factors on which the Commission did base this amendment was the observed difficulty in some cases (although not in the Shearon Harris proceeding) in scheduling the exercise so that it would allow time for a hearing while still being conducted within one year of plant readiness to be licensed. Another factor was the observed difficulty of utilities in predicting a plant's readiness for a full-power operating license. In this situation, as in the case of the Shearon Harris plant, while the holding of the full participation exercise and the licensing hearing would be completed within one year, due to unanticipated construction delays the plant would not be ready for a full-power operating license within the one year time frame.

With regard to the commenter's statement that nuclear accidents tend "to occur early," it is correct that the few major nuclear accidents that have occurred, *i.e.,* the Three Mile Island Accident and the Browns Ferry fire, did in fact occur early in the operational history of the plants. However, the number of these occurrences is far too small to establish a "tendency." In any case, the commenter's suggestion that the need for emergency preparedness may be heightened during the initial period of plant operation, even if well taken, does not present a valid objection to this rule change because, for the reasons given above, the rule change does not decrease the level of emergency preparedness at a nuclear power plant.

The license and exemption have already been issued in the Shearon Harris proceeding. This rulemaking was not the basis upon which a hearing on the exemption request was denied. *Carolina Power & Light Co. et al.* (Shearon Harris Nuclear Power Plant) CLI–86–24, 24 NRC ____ (December 5, 1986). Certainly, if the exemption request were pending, it would now be mooted as a result of this rulemaking. The scope of issues open for litigation may be changed by rulemaking. Engaging in such rulemaking has been held by the courts not to deny hearing rights of any person. See *Siegel v. AEC,* 400 F.2d 778 (1968).

13. Laura Drey

Summary of Comment. Ms. Drey opposed the rule change but stated no reasons.

Commission Response. None required.

14. Kenneth Vickery

Summary of Comment. Mr. Vickery opposed the amendment, stating that "the NRC must know if the plants and the surrounding areas are ready for accidents when starting operation since many serious accidents occur early in the operating lives of nuclear power plants."

Commission Response. See response to comment of Wells Eddleman, #12 above.

15. Rachel Allen

Summary of Comment. This comment was a duplicate of Comment #14.

16. Shaw, Pittman, Potts & Trowbridge

Summary of Comment. This law firm filed comments on behalf of 9 entities holding nuclear power plant operating licenses or construction permits. These commenters supported the proposed rule, fundamentally for the reasons cited by the Commission in the notice of proposed rulemaking. The commenters also noted that the proposed rule uses the term "full-scale exercise" which is otherwise undefined in the regulations and recommended that the term "full participation exercise" be used.

Commission Response. The term "full-scale exercise" has been replaced with the term "full-participation exercise" and the last two sentences of the proposed rule have been revised for purposes of clarity.

17. Carolina Power and Light Company

Summary of Comment. Carolina Power and Light Company (CP&L) supported the amendment and cited reasons similar to those given by the Commission. CP&L noted that its recent experience in licensing the Shearon Harris facility bore out the need for the rule change.

Commission Response. None required.

18. North Carolina Department of Crime Control and Public Safety

Summary of Comment. This commenter supported the proposed rule on three grounds:

1. It makes the NRC rule consistent with FEMA's and increases internal consistency in NRC regulations.
2. It reduces undue burdens on State and local governments.
3. It allows more time for litigation of the results of a pre-operational exercise.

Commission Response. The reasons given by this commenter support the Commission's position as stated in the notice of proposed rulemaking.

III. Commission Decision

The Commission has reviewed all comments received and has decided to proceed with a final rule. The text of the proposed rule has been altered as noted in the response to comments #5 and #16 above. Upon publication of the final rule, a full participation exercise must be held within two years prior to issuance of a nuclear power plant operating license for operation above 5 percent rated power. If the full participation exercise is conducted more than one year prior to issuance of an operating license for full power, an onsite exercise which tests the licensee's emergency plans shall be conducted one year before issuance of an operating license for full power.

Additional Views of Commissioner Asselstine

I continue to believe that the requirement to conduct a full participation exercise, which includes State and local government participation, within one year prior to issuance of an operating license is needed to provide an accurate and timely verification of the adequacy of emergency preparedness. The purpose of this requirement is to provide an up-to-date assessment of the state of emergency preparedness for a new plant at the time the plant receives an operating license. This requirement has been easily satisfied in most cases. In the few cases in which there has been some difficulty, the Commission's exemption process provides a suitable alternate method for addressing the situation. Given the satisfactory experience with the current rule and the benefit in having up-to-date and accurate information on the state of emergency preparedness at new nuclear power plants, I would not relax the existing one-year requirement for a full participation exercise.

Environmental Assessment and Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. See 10 CFR 51.20(a)(1). Moreover, the Commission has determined, pursuant to 10 CFR 51.32, that the final rule has no significant environmental impact. This determination has been made because the Commission cannot identify any impact on the human environment associated with changing the timing of full participation of State and local governments in pre-licensing emergency preparedness exercises from within one year of license issuance to within two years.

The need for this rulemaking is explained in the Supplementary Information accompanying this final rule. The alternative approaches that were considered in this rulemaking proceeding were:

1. To retain the requirement for a full participation exercise within one year of issuance of an operating license.
2. To relax the requirement to within two years of issuance of an operating license.

There were no environmental impacts identified from either of the alternatives considered.

In addition, when promulgating the original emergency planning and preparedness regulations in 1980, the NRC prepared an "Environmental Assessment for Final Changes to 10 CFR Part 50 and Appendix E of 10 CFR Part 50, Emergency Planning Requirements for Nuclear Power Plants" (NUREG-0685, June 1980), and concluded that under the criteria of 10 CFR Part 51 an environmental impact statement was not required for the Commission's emergency planning and preparedness regulations, which included 10 CFR Part 50, App. E as hereby revised. NUREG-0685 may be examined in the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies are available for purchase through the Superintendent of Documents, USGPO, Box 37082, Washington, DC, 20013-7082.

Paperwork Reduction Act

The final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Analysis

The Commission has prepared a regulatory analysis for this regulation. The analysis examines the costs and benefits of the action and the alternatives considered by the Commission. A copy of the regulatory analysis is available for inspection and copying, for a fee, at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from Michael T. Jamgochian, Regulatory Applications Branch, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 443-7657.

Backfit Analysis

This final rule does not modify or add to systems, structures, components or design of a facility; the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility. Accordingly, no backfit analysis pursuant to 10 CFR 50.109 is required for this final rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. The rule concerns the timing of a full participation exercise of emergency plans for applicants for nuclear power plant licenses. The electric utility companies owning and operating these nuclear power plants are dominant in their service areas and do not fall within the definition of a small business found in the Small Business Act, 15 U.S.C. 632, or within the Small Business Size standards set forth in 13 CFR Part 121. Although part of the burden for the conduct of emergency preparedness exercises falls on State and local governments, the final rule, by changing the frequency of the requirement, if anything lessens the amount of the current burden. Thus, the final rule does not impose a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act of 1980.

List of Subjects in 10 CFR Part 50

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

For the reasons set out in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendment to 10 CFR Part 50:

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 5091, 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). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c), and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Appendix E—[Amended]

2. In Appendix E Section IV, paragraph F.1 and footnote 4 to this section are revised to read as follows:

* * * * *

IV. Content of Emergency Plans

1. A full participation[4] exercise which tests as much of the licensee, State and local emergency plans as is reasonably achievable without mandatory public participation shall be conducted for each site at which a power reactor is located for which the first operating license for that site is issued after July 13, 1982. This exercise shall be conducted within two years before the issuance of the first operating license for full power (one authorizing operation above 5% of rated power) of the first reactor and shall include participation by each State and local government within the plume exposure pathway EPZ and each State within the ingestion exposure pathway EPZ. If the full participation exercise is conducted more than one year prior to issuance of an operating licensee for full power, an exercise which tests the licensee's onsite emergency plans shall be conducted within one year before issuance of an operating license for full power. This exercise need not have State or local government participation.

* * * * *

Dated at Washington, DC, this 30th day of April, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87–10321 Filed 5–5–87; 8:45 am]

BILLING CODE 7590-01-M

[4] "Full participation" when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite local and State authorities and licensee personnel physically and actively take part in testing their integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant. "Full participation" includes testing the major observable portions of the onsite and offsite emergency plans and mobilization of State, local and licensee personnel and other resources in sufficient numbers to verifiy the capability to respond to the accident scenario.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–30–AD; Amdt. 39–5620]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires a one-time inspection of the trailing edge flap drive vapor seals to assure that they are installed correctly and rework, if necessary. This amendment is prompted by a report of a control restriction in the lateral control system which resulted from an improperly installed vapor seal. This condition, if not corrected, could result in insufficient control authority or in controls that are jammed with a continuous roll input.

EFFECTIVE DATE: May 22, 1987.

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

FOR FURTHER INFORMATION CONTACT: Mr. Richard Yarges, Airframe Branch, ANM–120S; telephone (206) 431–1925. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: This amendment is prompted by a report of a control restriction in the lateral control system of a Boeing Model 767 airplane. In this incident, right control wheel motion was restricted to about 20 percent of full travel. This restriction has been attributed to interference between a trailing edge flap drive vapor seal and the right inboard aileron droop quadrant. The operator who reported the incident stated that the airplane on which it occurred had accumulated over 14,000 hours time-in-service at the time of the incident and that the vapor seal on that airplane had not been altered since the airplane was new. This operator also reported that the interfering vapor seal could be rotated a small amount by hand so that it would either clear or interfere with the aileron droop quadrant.

The FAA attributes the interference to the improper installation of a trailing edge flap drive vapor seal and its supporting structure, followed by a small amount of rotational migration of the vapor seal while it was in service.

The proper installation of a vapor seal is with its flanges aligned horizontally. The vapor seal on the aircraft with the control restriction problem was reported to have had its flanges aligned vertically. With the horizontal installation, migration of a vapor seal to the extent that control interference could occur is not possible because of design features that prevent this.

Limited-control wheel movement such as encountered by the previously mentioned operator could limit lateral control of an airplane. If the droop quadrant is forced to travel beyond an interfering seal flange, the quadrant could become jammed in that position, which would result in a crew's inability to operate the ailerons on one wing and related spoilers. That condition could render one control wheel ineffective and require the other control wheel to be held in the opposite position to maintain level flight; roll control would be reduced significantly.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–27A0074, dated March 20, 1987, which describes inspections and rework procedures, if necessary, for the trailing edge flap drive vapor seals to assure that they are correctly installed.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires that a one-time inspection and rework, if necessary, of the trailing edge flap drive vapor seals to be accomplished in accordance with the aforementioned service bulletin.

During the investigation of this incident, it was discovered that the Boeing 767 Illustrated Parts Catalog, the Boeing 767 Maintenance Manual, and the Boeing 767 Maintenance Planning Data document all contain illustrations depicting vapor seals installed incorrectly. In order to prevent the improper installation of the vapor seal from re-occurring, this AD notes that operators should revise the FAA-approved airplane maintenance program so that the reinstallation instructions for the vapor seals are in concert with the aforementioned Boeing Alert Service Bulletin.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, as listed in Boeing Alert Service Bulletin 767-27A0074, dated March 20, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent lateral control system restriction or jamming resulting from improper installation of a trailing edge flap drive vapor seal, accomplish the following:

A. Within the next 100 landings or 30 days after the effective date of this AD, whichever occurs first, inspect the trailing edge flap drive vapor seals for correct installation in accordance with Boeing Alert Service Bulletin 767-27A0074, dated March 20, 1987, or later FAA-approved revision. Vapor seals found to be installed incorrectly must be reworked to correct the installation before further flight in accordance with the instructions contained in the aforementioned alert service bulletin.

Note.—At the time of issuance of this AD, the Boeing 767 Illustrated Parts Catalog, the Boeing 767 Maintenance Manual, and the Boeing 767 Maintenance Planning Data document all contained illustrations depicting a trailing edge flap drive vapor seal installed incorrectly, with the vapor seal flanges aligned vertically. The FAA-approved airplane maintenance program should be revised to take account of these errors.

B. An alternate means of compliance which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective May 22, 1987.

Issued in Seattle, Washington, on April 28, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-10237 Filed 5-5-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-CE-13-AD; Amdt. 39-5616]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm GmbH, (MBB) Models BO-209-150FV, -150RV, -160FV, -160RV, -150FF "MONSUN" Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Messerschmitt-Bolkow-Blohm GmbH, (MBB) Models BO-209-150FV, -150RV, -160FV, -160RV, -150FF "MONSUN" Series airplanes, which requires ultrasonic, eddy current testing, modification, and repetitive inspections of selected portions of the wing spar carry-through lower cap strip, and prohibition from further acrobatic flight. This AD is based upon one accident in which a Model BO-209 airplane lost a wing on an acrobatic flight at high positive g-loads. The inspection will detect fatigue cracks and preclude the loss of a wing.

DATES:

Effective Date: May 6, 1987.

Compliance: As described in the body of the AD.

ADDRESSES: Technical Note (TN) No. 209-1/87, dated January 22, 1987, Technical Instruction (TI) No. 209-1/87, dated January 26, 1987, TI No. 209-2/87, and MBB Instruction No. 80-L-32-2611, applicable to this AD may be obtained from Messerschmitt-Bolkow-Blohm GmbH, Post fach 801160, D-8000 Munchen 80, Federal Republic of Germany. This information may be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Munro Dearing, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000, Brussels, Belgium; Telephone (322) 513.38.30; or Mr. Herman C. Belderok, Foreign FAR 23 Section, Central Region, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: The West German Civil Airworthiness Authority, the Luftfarhrt-Bundesamt (LBA), issued an Airworthiness Directive (AD) 86-255MBB, dated December 1, 1986, prohibiting further flight of the Model BO-209 airplanes based upon an accident involving a