

Central File 33

DCS-MS-016

61-59-767

FEB 17 1983

MEMORANDUM FOR: William J. Dircks
Executive Director for Operations

FROM: Harold R. Denton, Director
Office of Nuclear Reactor Regulation

SUBJECT: FINAL RULE - APPLICABILITY OF LICENSE CONDITIONS AND
TECHNICAL SPECIFICATIONS IN AN EMERGENCY

This final rule involves a policy question previously sent to the Commission as SECY 82-99 dated March 5, 1982, approved by the Commission for publication as a proposed rule on July 15, 1982, and reported by SECY in a memorandum dated July 23, 1982.

Background

The proposed rule was published in the Federal Register on August 18, 1982 (47 FR 35996) for sixty days' public comment which expired on October 18, 1982. A total of thirty-seven responses were received, representing thirty-nine organizations or persons. The vast majority of commenters were in favor of the rule. Only minor changes have been made in response to comments received. The proposed notice of final rulemaking is shown in Enclosure 1 and provides a complete response to all comments received.

Discussion

In its consideration of SECY 82-99, the Commission had additional comments which were included in the notice of proposed rulemaking:

The proposed rule does not provide significant guidance to Part 50 licensees for identifying those situations in which deviations from license conditions or technical specifications are allowable. In addition, the proposed rule and the supplementary information does not contain standards to be used by the NRC staff in determining whether to take enforcement action against Part 50 licensees who deviate from license conditions or technical specifications in these types of situations. The Commission particularly solicits comments on these two areas.

Thirty-four comments were received in response to this request, which are discussed in full in Enclosure 1, pp.7-10.

CONTACT:
Charles M. Trammell, NRR
492-7389

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Commissioner Gilinsky had additional comments, as follows:

I believe the decision to operate outside the Technical Specifications should be made by a senior reactor operator since I understand that reactor operators are not trained or tested on both the basis and importance of the Technical Specifications. I would be interested in receiving comments on this issue.

Nineteen comments were received in response to this request. These are also discussed in full on pp. 10-11 of Enclosure 1.

In approving the proposed rule, Commissioner Roberts noted that he believes the NRC, in considering any enforcement action, should carefully consider the circumstances involved in which a licensee had taken actions departing from a license condition or technical specification in an emergency. Enclosure 1 pp. 8-10 contains some discussion of this matter.

The Commission also requested that:

Absent objections from Commissioners and provided that no significant adverse comments or significant questions have been received and no substantial changes in the text of the rule are indicated, the Executive Director for Operations arrange for publication of the amendment in final form. Additionally any comments in respect to added Commission views should be referred to them. If significant questions have been received or substantial changes in the text of the rule are indicated, the revised amendment will be submitted to the Commission for approval.

A proposed Commission Paper (Negative Consent Paper) has been prepared responding to these Commission comments and requests, Enclosure 4. Enclosure 4 also discusses one comment received that may be of interest to the Commission.

Recommendations: That the Executive Director for Operations:

1. Approve:

- a. The proposed Commission paper (Enclosure 4) which addresses Commission comments and requests related to this rule and allows time for Commissioner comment.
- b. Publication of the notice of final rulemaking (Enclosure 1) absent objections from the Commissioners.

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- c. The staff's conclusions set forth in Enclosures 2 and 3 which provide a Regulatory Analysis and analysis with respect to periodic systematic review of regulations.

2. Note:

- a. That in order to satisfy the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the notice of final rulemaking contains a certification that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.
- b. That the final rule would become effective 60 days following publication.
- c. That the recommendation for approval of this final rule is contingent upon nonreceipt of objections from Commissioners, and is otherwise in accordance with the delegated rulemaking authority of the EDO, 10 CFR 1.40(d) in that: no significant adverse comments or questions have been received on the notice of proposed rulemaking and no substantive changes in text have been made.
- d. That copies of the final rule will be distributed to applicants, licensees, persons who commented on the proposed rule, and other interested persons by the Office of Administration.
- e. That pursuant to 10 CFR 51.5(d)(3) no environmental impact statement or negative declaration and environmental impact appraisal need be prepared in connection with the amendment because the amendment is neither significant nor substantive from an environmental standpoint.
- f. That a public announcement such as Enclosure 5, which was prepared by the Office of Public Affairs, will be issued when the Federal Notice is filed with the Office of the Federal Register.
- g. That the appropriate Congressional subcommittees will be informed by letter such as Enclosure 6.
- h. That the proposed action will not require any additional Commission resources.
- i. That the final rule contains information collection requirements that were reviewed and approved by the Office of Management and Budget; OMB approval No. 3150-0011.

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- J. That the Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it as required by the Regulatory Flexibility Act.
- k. The Offices of Nuclear Reactor Regulation and Inspection and Enforcement, and the Division of Rules and Records within the Office of Administration concur in this rulemaking action. The Office of Public Affairs concurs that the issuance of a public announcement is appropriate. The Office of the Executive Legal Director has no legal objection.

Original Signed by
 L. H. R. Denton

Harold R. Denton, Director
 Office of Nuclear Reactor Regulation

Enclosures:

- 1. Federal Register Notice of Final Rulemaking
- 2. Regulatory Analysis
- 3. Analysis with Respect to Periodic Systematic Review of Regulations
- 4. Issued Commission Paper (Negative Consent)
- 5. Draft Public Announcement
- 6. Draft Congressional Letter

Distribution: See page 6

Approved For Publication

In a final rule published March 19, 1982 (47 FR 11816), the Commission delegated to the EDO (10 CFR 1.40(c) and (d)) the authority to develop and promulgate rules as defined in the APA (5 U.S.C. 551(4)) subject to the limitation in NRC Manual Chapter 0103, Organization and Functions, Office of the Executive Director for Operations, paragraphs 0213, 038, 039, and 0310. The enclosed final rule entitled "Applicability of License Conditions and Technical Specifications in an Emergency" amends 10 CFR 50.54 and 50.72 to allow a Part 50 licensee to take reasonable action that departs from a license condition or technical specification in an emergency when such action is immediately needed to protect the public health and safety and requires a prompt report of such action to the NRC Operations Center.

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This final rule does not constitute a significant question of policy not previously considered by the Commission, nor does it amend regulations contained in 10 CFR Parts 0, 2, 8, 9 Subpart C, or 110. Its issuance is consistent with the Commission's direction of July 23, 1982 that, absent objections from Commissioners and provided that no significant adverse comments or significant changes in text of the rule are indicated, the EDO should arrange for publication of the amendment in final form. I therefore find that this rule is within the scope of my rulemaking authority and am proceeding to issue it.

Original signed by

William J. Dircks
Executive Director for Operations

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J. Falton
2/17/83

subject to comment

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NUCLEAR REGULATORY COMMISSION

10 CFR PART 50

Applicability of License
Conditions and Technical Specifications
in an Emergency

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to clarify that all Part 50 licensees may take reasonable action that departs from a license condition or technical specification in an emergency when this action is immediately needed to protect the public health and safety. The rule is being issued because NRC regulations currently do not permit deviations from license conditions or technical specifications under any conditions. Emergency situations can arise, though, during which a license condition or a technical specification could prevent necessary protective action by the licensee. The rule allows this action to be taken in emergency circumstances.

EFFECTIVE DATE:

FOR FURTHER INFORMATION CONTACT: Charles M. Trammell III, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Telephone: 301-492-7389).

SUPPLEMENTARY INFORMATION: The rule clarifies the regulations in 10 CFR Part 50 by providing that a licensee may take reasonable action that departs from a

license condition or a technical specification in an emergency when such action is immediately needed to protect the public health and safety.

At present, NRC regulations do not permit deviations from license conditions or technical specifications under any circumstances. Emergencies can arise, though, during which compliance with a license condition or a technical specification could prevent necessary action by a licensee to protect the public health and safety. Licensees are understandably reluctant to take actions contrary to their licenses. Absolute compliance with the license in emergencies can be a barrier to effective protective action by a licensee.

Technical specifications contain a wide range of operating limitations and requirements concerning actions to be taken if certain systems fail and if certain parameters are exceeded. The bulk of technical specifications are devoted to keeping the plant parameters within safe bounds and keeping safety equipment operable during normal operation. However, technical specifications also require the implementation of a wide range of operating procedures which go into great detail as to actions to be taken in the course of operation to maintain facility safety. These procedures are based on the various conditions--normal, transient and accident conditions--analyzed as part of the licensing process. Nevertheless, unanticipated circumstances can occur during the course of emergencies. These circumstances may call for responses different from any considered during the course of licensing--e.g., the need to isolate the accumulators to prevent nitrogen injection to the core while there was still substantial pressure in the primary system was unforeseen in the licensing process before TMI-2; thus, the technical specifications prohibited this

action. Special circumstances requiring a deviation from license requirements are not necessarily limited to transients or accidents not analyzed in the licensing process. Special circumstances can arise during emergencies involving multiple equipment failures or coincident accidents where plant emergency procedures could be in conflict, or not applicable to the circumstances. In addition, an accident can take a course different from that visualized when the emergency procedure was written, thus requiring a protective response at variance with a procedure required to be followed by the licensee. Also, performance of routine surveillance testing, which might fall due during an emergency, could either divert the attention of the operating crew from the emergency or cause the loss of equipment needed for proper protective action.

Technical specifications or license conditions can be amended by NRC, and the rule is not intended to apply in circumstances where time allows this process to be followed. The rule would apply only to those emergency situations where action by the licensee is required immediately to protect the public health and safety--action which may be contrary to a technical specification or a license condition.

It is the intent of the rule to allow deviations from license requirements only in the special circumstances described. It is not intended that licensees be allowed to deviate from procedures and other license requirements where these are applicable.

For these reasons, the Commission believes that there should be a specific provision in the Commission's rules clearly indicating that a licensee may

take reasonable action that departs from a license condition or technical specification in an emergency when such action is immediately needed to protect the public health and safety.

The rule also requires a licensee, under §50.72, to notify the NRC Operations Center by telephone of emergency circumstances requiring it to take any action that departs from a license condition or a technical specification. When time permits, the notification is made before the protective action is taken; otherwise, it is made as soon as possible thereafter. The impact of this reporting requirement on licensees is expected to be negligible.

The rule follows the recommendation in NUREG-0616, "Report of Special Review Group, Office of Inspection and Enforcement on Lessons Learned from Three Mile Island"* that NRC establish and announce a firm policy regarding the applicability of the license under emergency circumstances, with certain exceptions discussed below.

- a). The rule does not require that departure from a license condition or technical specification have the concurrence of the most senior licensee and NRC personnel available at the time before the departure.

*NUREG-0616 is available for inspection and copying for a fee at the NRC Public Document Room, 1717 H Street, N.W., Washington, D.C. Copies may be purchased through the NRC/GPO Sales Program by using a GPO Deposit Account, MasterCard or Visa by calling the NRC/GPO Sales Office on (301) 492-9530 or by sending a check or money order payable to Superintendent of Documents to: Sales Manager 058, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Purchase orders are acceptable from Federal, state, and local government offices only.

While the Commission certainly does not disagree with the general concept that the most senior licensee personnel available at the time should be involved, the rule specifies that such action shall be approved by a licensed senior operator as a minimum and does not go into further detail as to which additional persons should be involved if time permits or which persons should be involved under other circumstances. The persons responsible for safe operation of the facility are already identified in the facility license and implementing procedures.

- b). The rule does not require the concurrence of NRC personnel. Receiving the "concurrence" or "approval" of NRC personnel would amount to a license amendment using procedures contrary to those existing for amendments. The rule specifically applies to emergency situations where immediate action is needed and time is not available for a license amendment. Requiring the concurrence of NRC personnel available at the time tends to shift the burden of safety from the licensee to NRC - contrary to the rule's intent. It could also shift the burden to NRC personnel on site who may be unqualified to concur in a proposed licensee action.

The rule was published as a proposed rule in the Federal Register on August 18, 1982 (47 FR 35996). A sixty-day comment period expired on October 18, 1982.

A total of thirty-seven responses were received, representing thirty-nine organizations or persons. Respondees included: licensees of power reactors (24), individuals (5), research reactor licensees (2), nuclear steam system suppliers (2), professional organizations (2); and one response each from: a

law firm, a State, a labor union, and an architectural-engineering firm. Copies of comments received by the Commission in response to the notice of proposed rulemaking may be examined in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. (file PR-50, 47 FR 35996).

The vast majority of the commenters (thirty-seven) were in favor of the rule. Many expressed enthusiastic support. Only two commenters believed that the rule should not be adopted. Eight commenters believed the rule should be issued as proposed. However, as a result of comments received by others, some changes have been made, as discussed below.

One commenter pointed out the similarity between the proposed rule and the so-called "General Prudential Rule" contained in both the International Regulations for Preventing Collisions at Sea, 1972, and the Inland Navigational Rules Act of 1980. The rule is identical in each and states:

In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from those rules necessary to avoid immediate danger. (Rule 2(b)).

The commenter added that a Commanding Officer (of a naval ship) is permitted to deviate from written rules to the extent necessary to save his ship, and that there is ample precedent for the proposed NRC rule.

It is also very similar to a rule of the Federal Aviation Administration (FAA) governing the operation of aircraft, 14 CFR 91.3, which states that "[i]n an emergency requiring immediate action, the pilot in command may deviate from

any rule . . . to the extent necessary to meet that emergency. Each pilot in command who deviates from a rule . . . shall, upon the request of the Administrator, send a written report of that deviation to the Administrator."

The Commission had both the General Prudential Rule and the FAA rule in mind when it framed the proposed NRC rule. Further, it is clear that Congress believes that licensees have authority to take whatever action is necessary to respond to emergencies involving an imminent threat to public health and safety. H. R. Rep. No. 97-884, 97th Cong., 2d Sess. 38 (1982). The rule codifies and clarifies this authority.

In addition to seeking the usual public comment as to any aspects of the proposed rule, the Federal Register Notice of the proposed rule stated:

The proposed rule does not provide significant guidance to Part 50 licensees for identifying those situations in which deviations from license conditions or technical specifications are allowable. In addition, the proposed rule and the supplementary information does not contain standards to be used by the NRC staff in determining whether to take enforcement action against Part 50 licensees who deviate from license conditions or technical specifications in these types of situations. The Commission particularly solicits comments on these two areas.

Thirty-four comments were received in response to this request, and most were strongly opposed to the Commission providing additional deviation guidance or enforcement standards.

As for deviation guidance, one comment, which was opposed to such, was typical: "[w]e do not believe that it is feasible to provide detailed guidance as to when deviations are permissible. The whole purpose of the proposed amendments

is to provide flexibility in situations that cannot be anticipated. Any effort to provide more detailed standards is likely to defeat that purpose by unintentionally excluding a situation in which a deviation is necessary or appropriate."

The Commission agrees with this comment, and feels that any attempt to define in more detail the precise circumstances under which a deviation is permissible is bound to exclude a circumstance where deviation might be entirely appropriate. Whereas the conditions under which a deviation is allowed are not described at length, nevertheless, the deviation criteria are quite specific: the licensee must be faced with an emergency situation in which compliance with the license is posing a barrier to effective protective action and rapid protective action is needed.

Based on the foregoing and public comments received, no changes have been made to the rule with respect to the conditions under which the rule may be invoked.

In response to the Commission's request for comments on the need for enforcement standards, most commenters stated that the matter of enforcement should be based on the specific circumstances surrounding the event, and that enforcement standards would be difficult to frame for the unusual circumstances under which the rule might be used. One commenter pointed out that enforcement standards would tend to limit actions that could or could not be taken, and thereby serve to provide deviation guidance which most felt was inappropriate (discussed above).

The Commission has concluded that enforcement standards, as such, are not needed. The Commission agrees that providing such standards would tend to define the circumstances under which the rule could be used (deviation guidance). As discussed above, this has been judged to be undesirable.

The rule does, however, contain implicit enforcement guidance. The NRC would review a licensee's use of the rule to determine answers to the following types of questions:

- a. Did the licensee have to act immediately to avert possible adverse consequences to the public health and safety?
- b. Was adequate or equivalent protective action that is consistent with the license immediately apparent?
- c. Was the action reasonable? Based on information available at the time did it serve to protect the public health and safety? Did the licensee deviate from its license only to the extent necessary to meet the emergency?
- d. Was there time for an amendment of the license to be approved by NRC?

Answers to these questions should be adequate to determine if the rule had been violated. Specific enforcement action would have to depend on the specific circumstances.

Ten persons made comments to the effect that overly critical reviews or overzealous enforcement action following the use of the rule would cause

licensees to hesitate to use the rule. The Commission agrees with these comments. The Commission recognizes that a licensee will need to exercise judgment in applying the rule, and in its after-the-fact review, it may not agree in every instance with licensee's actions. However, enforcement action for a violation of the rule will not be taken unless a licensee's action was unreasonable considering all the relevant circumstances having to do with the emergency.

The Federal Register Notice for the proposed rule contained additional comments of Commissioner Gilinsky, in which he stated:

I believe the decision to operate outside the Technical Specifications should be made by a senior reactor operator since I understand that reactor operators are not trained or tested on both the basis and importance of the Technical Specifications. I would be interested in receiving comments on this issue.

Nineteen comments were received in response to this request, and most all agreed that such a decision should be made, as a minimum, by a licensed senior operator. Those opposed expressed the opinion that such concurrence should not be mandatory or that higher concurrences should be obtained if possible.

A minor clarifying change to the rule has been made in response to these comments and another which stated that the rule was confusing because the first paragraph of the proposed rule discussed licensees and the second discussed operators. The second paragraph now reads: "Licensee action permitted by paragraph (y) of this section shall be approved, as a minimum, by a licensed senior operator." This change makes it clear that if a licensee

takes emergency action allowed by paragraph (y), such action must be approved by, at least, a licensed senior operator acting for the licensee. Under the provision, any licensed senior operator (licensed for the unit involved) would be sufficient. However, as one commenter pointed out, more senior licensee personnel would probably be available. If so, the decision to depart from the license in an emergency would pass to them (as higher authorities in the chain of command). If, however, an emergency requiring prompt action should occur on a back shift, no licensee representative higher in the chain of command is likely to be available. To require other approvals could serve to defeat the purpose of the rule.

One commenter stated that the rule should provide for deviations from the NRC regulations as well as license conditions and technical specifications. This was intended, and the language of numerous comments indicated that this was understood. Each license issued is subject to all applicable rules, regulations and orders of the Commission. This is stated in the license itself and also in 10 CFR 50.54(h) as a condition of the license. Therefore, the rule does apply to NRC rules, regulations and orders as well.

Three comments were received regarding the applicability of the rule in situations where damage to the facility or injury to personnel might be involved. For the reasons discussed above, the rule does not contain explicit deviation guidance or examples. Nevertheless, the threat of injury to personnel would be an appropriate example. As for invoking the rule to prevent damage to the facility or machinery, it would depend on the specific circumstances of the emergency.

The rule does not apply to machinery or the facility, per se, but would apply if such damage is tied to a possible adverse effect on public health and safety.

One commenter suggested that the Commission emphasize the permissive nature of the rule by explaining that its use is totally discretionary, that licensees need not invoke it even in an emergency, and that failure to invoke the rule would not constitute a violation of NRC requirements for which an enforcement action may be brought. This comment was not accepted. Whereas the language of the rule is permissive in nature, licensees are responsible for operating their facilities in such a manner as to protect the public health and safety. If, in an emergency, protective action is needed (and no action consistent with the license that can provide adequate or equivalent protection is immediately apparent) the licensee would be obliged to take the protective action that deviates from the license. Viewed in this sense, use of the rule is not optional.

One commenter suggested that the provisions of the rule be placed in the facility operating license indicating that Technical Specifications are not intended to prevent a licensee from undertaking, during the course of emergency conditions, any action necessary to protect public health and safety. No changes to the rule have been made in response to this comment. First, as stated above, the rule applies not only to technical specifications, but any NRC requirement, e.g., regulations, rules, license conditions, or technical specifications. Second, it is not necessary to place the statement into the operating license itself, since it is being published as a rule in §50.54,

"Conditions of licenses." By so doing, the rule applies to all operating licenses.

A commenter suggested that a policy statement to the same safe effect would be better than a rule. This was not accepted, since the Commission believes that it would be inappropriate to issue a policy statement in conflict with a rule.

Only two commenters were not in favor of the rule. One comment stated that the rule would be abused. The Commission disagrees with this comment, noting that several safeguards have been built into the rule to prevent this. First, licensees must notify the NRC by telephone when the rule is used. Second, the NRC may require written statements from a licensee concerning its actions after use of the rule. One commenter agreed that these provisions provided adequate safeguards against abuse.

Two commenters suggested that written notice to the Commission of use of the rule should be mandatory. It is highly likely that a written report would be required since most violations of the license or technical specifications do require a written report. To the extent that the Commission's information needs related to the event are not met, the Commission would require additional information, as provided for in the rule. A mandatory written report is therefore not deemed essential.

One commenter stated that the reporting requirement "When time permits, the notification [of the use of the rule] shall be made before the protective action is taken. . ." was inconsistent with the use of the term "immediately

needed" language of the rule, and implied that a prior report should not be required at all. In response, the Commission notes that all power reactors have dedicated telephones connected directly to the NRC Operations Center at all times, and, under most circumstances under which the rule might need to be used, the licensee would be in contact with the NRC Operations Center anyway. Therefore, most emergency situations would allow time to make a prior notification to the NRC, considering the ease and speed that it could be done. Second, while the term "immediately" as used in the rule is not defined, it could involve a period of hours as the emergency develops, and certainly a period of time that is too short to permit NRC approval of a change to the license before the action must be taken (as stated earlier). Therefore, there is not necessarily an inconsistency between the prior report and the timing of the need for action. If, however, there is no time for a prior report, it is not required.

One commenter stated that the rule constituted an admission that NRC rules and licenses are not adequate; another stated that the rule shows that NRC rules have become unwieldy. The Commission does not agree with these comments, and believes the issuance of the rule will result in increased protection to the public health and safety. Any attempt to define NRC requirements to cover all conceivable circumstances, as discussed earlier, is bound to fail, and would result in unwieldy regulations.

One comment noted an apparent inconsistency between the rule (which admits that unanticipated circumstances can occur during the course of emergencies that may call for responses different from any considered during the course of

licensing) and the admissibility of intervenor contentions that are denied litigation at a hearing on the basis that such scenarios are incredible or so unlikely as to be barred from litigation.

The Commission, in issuing this rule, takes no position whatever as to the merit of any contention involving emergency circumstances that could be postulated at a nuclear facility. Rather, the rule assumes that special circumstances have occurred which makes use of the rule necessary to protect the public health and safety.

A commenter suggested that use of the rule be tied to the "general emergency" emergency classification, i.e., that the rule should apply only when a general emergency has been declared by the licensee. This comment was not accepted. Emergencies can develop rapidly. Use of the rule should not be encumbered by administrative prerequisites.

A commenter proposed that a large fee - up to one million dollars - be charged for use of the rule. The thrust of the comment was to ensure that violation of NRC requirements be carefully considered. Another suggested holding hearings after the emergency to determine justifications for use of the rule and to see if other actions could have been taken. As stated earlier, the Commission believes that the rule contains adequate safeguards. Therefore these comments were not adopted.

Finally, a commenter suggested that an evaluation be made of each instance in which a deviation was made to prevent possible future need for similar deviations. The Commission will review each use of the rule both to confirm that the

intent of the rule was satisfied and also to analyze the circumstances leading to the emergency to see what permanent corrective action may be appropriate.

REGULATORY ANALYSIS

The Commission has prepared a regulatory analysis for this regulation. The analysis examines the costs and benefits of the rule as 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, N.W., Washington, D.C. Single copies of the analysis may be obtained from Charles M. Trammell III, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Telephone (301) 492-7389.

PAPERWORK REDUCTION ACT STATEMENT

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget; OMB approval No. 3150-0011.

REGULATORY FLEXIBILITY CERTIFICATION

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities. These regulations affect licensees that own and operate nuclear utilization facilities licensed under sections 103 and 104 of the Atomic Energy Act of 1954, as amended. The amendment serves to clarify the applicability of license conditions and technical specifications in an emergency. The clarification would be incorporated as a condition of the respective operating licenses, and would require no action on the part of licensees. Accordingly,

there is no new, significant economic impact on these licensees; nor do these licensees fall within the definition of small businesses set forth in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR Part 121.

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, and Reporting requirements.

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

PART 50 -- DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES:

1. The authority citation for Part 50 continues 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). 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. 104, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§50.10(b) and (c) and 50.54 are issued under sec. 1611, 68 Stat. 949, as amended (42 U.S.C. 2201(f)); and §§50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 68 Stat. 959, as amended (42 U.S.C. 2201(o)).

2. New paragraphs (y) and (z) are added to §50.54 to read as follows:

§50.54 Conditions of licenses.

* * * * *

(y) A licensee may take reasonable action that departs from a license condition or a technical specification (contained in a license issued under this part) in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.

(z) Licensee action permitted by paragraph (y) of this section shall be approved, as a minimum, by a licensed senior operator prior to taking the action.

3. A new paragraph (c) is added to §50.72 to read as follows:

§50.72 Notification of significant events.


* * * * *

(c) Each licensee licensed under §50.21 or §50.22 shall notify the NRC Operations Center by telephone of emergency circumstances requiring it to take any protective action that departs from a license condition or a technical specification, as permitted by §50.54(y) of this part. When time permits, the notification must be made before the protective action is taken; otherwise, the notification must be made as soon as possible thereafter. The Commission may

require written statements from a licensee concerning its actions taken under the provisions of paragraph 50.54 (y) of this part.

Dated at Bethesda, Maryland this 10th day of March, 1983.

For the Nuclear Regulatory Commission.



William J. Dircks
Executive Director for Operations

**ANALYSIS WITH RESPECT TO PERIODIC SYSTEMATIC REVIEW OF REGULATIONS
AND CRITERIA
(THE ACTION PLAN TASK IV.6.2)**

SUBJECT: 10 CFR Part 50 - Proposed Rule to Clarify Applicability of Facility License Conditions and Technical Specifications in an Emergency

**Criteria for Periodic and Systematic Review
of Regulations**

NRC Compliance

1. The proposed regulations are needed.

The need for the proposed rule is addressed in the preamble to the proposed rule and related Regulatory Analysis (Enclosure 3).

2. The direct and indirect effects of the regulations have been adequately considered.

Since the proposed rule involves only a clarification of actions licensees may take in an emergency, it requires no direct action by licensees, and involves no costs or other impacts. Indirect effects would be an improvement in safety since the proposed rule would make it clear that licensees can take action urgently needed in emergencies to protect the public health and safety, even though such action may be contrary to a license condition or Technical Specification.

3. Alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen.

Alternative approaches have been considered, including (1) not proposing the rule, and (2) incorporating the clarification into each individual operating license. Option (1) was rejected because it is felt that the clarification will result in increased safety and would provide useful guidance to NRC inspectors as well. Option (2) was rejected as not necessary because modifying 10 CFR 50.54 would have the same effect as amending each operating license without expending licensing resources of both licensees and NRC.

4. Public comments have been considered and an adequate response has been prepared.

Public comments have been considered and discussed in full in the Supplementary Information section of the Federal Register Notice of the proposed final rule.

ENCLOSURE 2

**Criteria for Periodic and Systematic Review
of Regulations**

NRC Compliance

5. The regulation is written in plain English and is understandable to those who must comply with it.
6. An estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulation.
7. The name, address, and telephone number of a knowledgeable agency official is included in the publication.
8. A plan for evaluating the regulation after its issuance has been developed.

The proposed amendment has been reviewed and edited for the specific purpose of ensuring that the regulation is clear and can be understood by persons who are required to comply with it.

The reporting requirements contained in the proposed rule involve a negligible burden on licensees.

The Federal Register Notice promulgating the proposed rule contains the name, address, and telephone number of a knowledgeable agency official.

Licensee and staff experience with the regulation will be used to evaluate the regulation. In addition, this regulation will be reviewed in the second cycle of NRC's periodic and systematic review process (1986-1991).

REGULATORY ANALYSIS

Revision to 10 CFR Part 50 Regarding Applicability of License Conditions and Technical Specifications in an Emergency

Introduction

The proposed revision described above does not involve (a) an annual effect on the economy of \$100 million or more in direct or indirect costs, or (b) a significant impact on health, safety or the environment, or (c) a substantial increase in the cost to NRC licensees, permits holders, or applicants; or to Federal, state or local governments, or to geographical regions.

Statement of the Problem

At present, NRC regulations do not permit deviations from license conditions or technical specifications under any circumstances. Emergencies can arise, though, during which compliance with a license condition or a technical specification could prevent necessary protective action by a licensee. Licensees are understandably reluctant to take actions contrary to their licenses. Absolute compliance with the license in emergencies can be a barrier to effective protective action by a licensee.

Technical specifications contain a wide range of operating limitations and requirements concerning actions to be taken if certain systems fail and if certain parameters are exceeded. The bulk of technical specifications are devoted to keeping the plant parameters within safe bounds and keeping safety equipment operable during normal operation. However, technical specifications also require the implementation of a wide range of operating procedures which go into great detail as to actions to be taken in the course of operation

to maintain facility safety. These procedures are based on the various conditions -- normal, transient and accident conditions -- analyzed as part of the licensing process. Nevertheless, unanticipated circumstances can occur during the course of emergencies. These circumstances may call for responses different from any considered during the course of licensing -- e.g., the need to isolate the accumulators to prevent nitrogen injection to the core while there was still substantial pressure in the primary system was unforeseen in the licensing process before TMI-2; thus, the technical specifications prohibited this action. Special circumstances requiring a deviation from license requirements are not necessarily limited to transients or accidents not analyzed in the licensing process. Special circumstances can arise during emergencies involving multiple equipment failures or coincident accidents where plant emergency procedures could be in conflict, or not applicable to the circumstances. In addition, an accident can take a course different from that visualized when the emergency procedure was written, thus requiring a protective response at variance with a procedure required to be followed by the license. Also, performance of routine surveillance testing, which might fall due during an emergency, could either divert the attention of the operating crew from the emergency or cause the loss of use of equipment needed for proper protective action.

Such problems could occur at any facility licensed under Part 50. There are no existing or proposed regulatory actions that address this problem other than the proposed rule discussed herein.

Objective

Based on the foregoing, the NRC staff believes that there should be a specific provision in the Commission's rules clearly indicating that a licensee may take reasonable action that departs from a license condition or technical specification in an emergency when such action is immediately needed to protect the public health and safety. Denying a licensee the ability to take necessary protective action under such emergency circumstances could have an adverse affect on public health and safety.

Costs and Benefits

The proposed rule would involve no direct costs to NRC other than the cost of the rulemaking procedure itself. Indirect costs (involving investigation of licensees' use of the rule) are expected to be negligible both because use of the rule is expected to be very infrequent and also because such investigations would be closely tied to NRC's normal regulatory role in evaluating an emergency at a nuclear facility.

Costs to licensees is expected to be negligible. Implementation of the rule would require minor revisions to administrative procedures. The reporting burden is also negligible because power reactor licensees would already be in contact with the NRC Operations Center in an emergency. Research and test reactor licensees are not expected to use the rule, but if they did, the burden would only involve a long-distance phone call to the NRC Operations Center.

There are no costs to the public.

In summary, the rule involves negligible costs and burden to NRC licensees, and has substantial benefit in that it allows licensees to take action - not otherwise allowed - in emergencies when such action is immediately needed to protect the public health and safety. This is explained in more detail in SECY 82-99 and in the Supplementary Information section of the final rule itself.

Implementation

As explained above, only minor revisions to administrative procedures are needed to implement the rule at a nuclear facility. Therefore, the rule is proposed to be made effective in 60 days following publication. This should allow adequate time for such revisions.

Coordination and Relationship to Existing or Proposed Requirements

The proposed rule herein applies to all Part 50 licensees. Changes have been proposed to §50.72, "Notification of significant events" (46 FR 61894) that would apply only to nuclear power reactor licensees licensed under §50.21(b) or §50.22. Close coordination will be required to ensure that the applicability of this rule is preserved.

**NRC AMENDING REGULATIONS TO PERMIT UTILITIES
TO TAKE CERTAIN EMERGENCY ACTIONS**

The Nuclear Regulatory Commission is amending its regulations to permit operators of nuclear power plants to depart from requirements of their operating license conditions or technical specifications in the event of an emergency requiring such action. A prompt report to the Commission is required.

The rule is being issued because current NRC regulations do not permit deviations from license conditions or technical specifications under any conditions. Emergency situations can arise, though, during which facility license conditions or technical specifications could prevent necessary protective action by the licensee. The rule would allow such action to be taken in emergency circumstances.

The amendment to Part 50 of the Commission's regulations will become effective on _____.

ENCLOSURE 5

DRAFT CONGRESSIONAL LETTER

Dear Chairman:

Enclosed for the information of the Subcommittee is a copy of a Federal Register Notice that amends the Commission's regulations.

The Commission is issuing a change to 10 CFR 50.54, "Conditions of licenses" and 10 CFR 50.72, "Notification of significant events," to clarify that a licensee may take reasonable action that departs from a facility license condition or technical specification in an emergency when such action is immediately needed to protect the public health and safety. Such actions must be promptly reported to the Commission.

The rule is being issued because current NRC regulations do not permit deviations from license conditions or technical specifications under any conditions. Emergency situations can arise, though, during which facility license conditions or technical specifications could prevent necessary protective action by the licensee. The rule would allow such action to be taken in emergency circumstances.

Sincerely,

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Enclosure:
Federal Register Notice

ENCLOSURE 6