



PRM-50-91

T. Moser, Chairman
STARS Integrated Regulatory Affairs Group
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DOCKETED
USNRC

STARS-08002

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Annette L. Vietti-Cook
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemaking and Adjudications Staff

**STRATEGIC TEAMING AND RESOURCE SHARING (STARS)
PETITION TO AMEND 10 CFR 50.36**

Reference: 1) Federal Register Notice Volume 72, page 49351, dated August 28, 2007, Final Rule, Licenses, Certifications, and Approvals for Nuclear Power Plants

Dear Ms. Vietti-Cook,

Pursuant to 10 CFR 2.802, the Strategic Teaming and Resource Sharing (STARS)¹ alliance submits the enclosed rulemaking petition (Petition) to the U.S. Nuclear Regulatory Commission (NRC) to amend 10 CFR 50.36, "Technical Specifications" to correct a paragraph numbering conflict introduced by a recent final rule for new plants (72FR49351 dated August 28, 2007). This Petition is an administrative change only (renumbering of paragraphs).

The recent final rule inserted a new paragraph 10 CFR 50.36(c) which caused the paragraph for the technical specification criteria to be re-designated from 10 CFR 50.36(c) to 10 CFR 50.36(d). This re-designation of the 10 CFR 50.36 sections resulted in significant unintended administrative consequences to licensees of operating nuclear power plants and to the NRC. The current Standard Technical Specification bases for operating nuclear power plants (NUREGs-1430, 1431, 1432, 1433, and 1434) reference 10 CFR 50.36(c) numerous times. For example, NUREG-1431, Volume 2, Revision 3.0, "Standard Technical Specifications Westinghouse Plants / Bases" makes reference to 10 CFR 50.36(c) over 100 times. The Petition requests that the new paragraph 10 CFR 50.36(c) inserted by Reference 1 be re-designated as paragraph 10 CFR 50.36(f) and the current paragraphs 10 CFR 50.36(d) through (f) be restored to 10 CFR 50.36(c) through (e).

¹ STARS consists of eleven plants at six stations operated by Luminant Power, AmerenUE, Wolf Creek Nuclear Operating Corporation, Pacific Gas and Electric Company, STP Nuclear Operating Company and Arizona Public Service Company

Template = SECY-051

SECY-02

The existing regulation 10 CFR 50.36(d) contains three errors in which parts of the new (d) still contain internal references to (c). Therefore, a change to 10 CFR 50.36 is necessary and re-designating the paragraphs as requested by this Petition is more beneficial for the STARS alliance, the industry and the NRC than correcting the incorrect internal references in 10 CFR 50.36(d).

The STARS alliance requests this change be implemented as soon as possible to minimize any further impact. There is adequate justification / precedent for the NRC to implement this requested Petition by issuing a proposed rule and direct final rule concurrently.

Thank you for your consideration of this Petition (Enclosed). If there are any questions regarding these comments, please contact me at 573-676-4775, or tmoser@ameren.com, or Carl Corbin at 254-897-0121, or carl.corbin@luminant.com.

Sincerely,



T. Moser, Chairman

STARS Integrated Regulatory Affairs Group

Enclosure Rulemaking Petition to amend 10 CFR 50.36

cc-

Bill Borchardt, Executive Director for Operations
Michael Case, Director, Division of Policy and Rulemaking
Mike Schoppman, Nuclear Energy Institute
Brian Mann, Excel Services

Rulemaking Petition to Amend 10 CFR 50.36

Summary

Pursuant to 10 CFR 2.802, the Strategic Teaming and Resource Sharing (STARS)² alliance submits this rulemaking petition (Petition) to the U.S. Nuclear Regulatory Commission (NRC) to amend 10 CFR 50.36, "Technical Specifications" to correct a paragraph numbering conflict introduced by a recent final rule for new plants (Reference 1). This Petition is an administrative change only (renumbering of paragraphs). The STARS alliance believes there is adequate justification / precedent for the NRC to implement this requested Petition by issuing a proposed rule and direct final rule concurrently.

The recent final rule inserted a new paragraph 10 CFR 50.36(c) which caused the paragraph for the technical specification criteria to be re-designated from 10 CFR 50.36(c) to 10 CFR 50.36(d). This re-designation of the 10 CFR 50.36 sections resulted in unintended administrative consequences to licensees of operating nuclear power plants and to the NRC. The current Standard Technical Specification bases for operating nuclear power plants (NUREGs-1430, 1431, 1432, 1433, and 1434) make reference to 10 CFR 50.36(c) numerous times. For example, NUREG-1431, Volume 2, Revision 3.0, "Standard Technical Specifications Westinghouse Plants / Bases" makes reference to 10CFR 50.36(c) over 100 times. This Petition requests that the new paragraph 10 CFR 50.36(c) inserted by Reference 1 be re-designated as paragraph 10 CFR 50.36(f) and the current paragraphs 10 CFR 50.36(d) through (f) be restored as 10CFR 50.36(c) through (e). The existing regulation 10 CFR 50.36(d) contains three errors in which parts of the new (d) still contain incorrect internal references to (c). Therefore, a change to 10 CFR 50.36 is necessary and re-designating the paragraphs as requested by this Petition is more beneficial for the STARS alliance, the industry and the NRC than correcting the incorrect internal references.

Petition Details

Paragraph (c) of regulation 2.802 "Petition for Rulemaking" identifies items a petition should include and are re-stated below (in bold and italic text) followed by the required information.

10 CFR 2.802 (c) (1) - Set forth a general solution to the problem or the substance or text of any proposed regulation or amendment, or specify the regulation which is to be revoked or amended;

Current NRC Regulation 10 CFR 50.36, paragraphs (c) through (f) states in part:

- (c) Each applicant for a design certification or manufacturing license under part 52 of this chapter shall include in its application proposed generic technical specifications in accordance with the requirements of this section

² STARS consists of eleven plants at six stations operated by Luminant Power, AmerenUE, Wolf Creek Nuclear Operating Corporation, Pacific Gas and Electric Company, STP Nuclear Operating Company and Arizona Public Service Company.

for the portion of the plant that is within the scope of the design certification or manufacturing license application.

- (d) Technical specifications will include items in the following categories:
 - (1) Safety limits...
 - (2) Limiting conditions for operation ...
 - (3) Surveillance requirements ...
 - (4) Design features ...
 - (5) Administrative controls ...
 - (6) Decommissioning ...
 - (7) Initial notification ...
 - (8) Written reports ...
- (e)
 - (1) This section shall not be deemed to modify the technical
 - (2) An applicant for a license authorizing operation of a production
 - (3) At the initiative of the Commission or the licensee
- (f) The provisions of this section apply to each nuclear reactor licensee....

Underlying Problem

The recent final rule (Reference 1) inserted a new paragraph “10 CFR 50.36(c)” which caused the paragraph for the technical specification criteria to be re-designated from 10 “CFR 50.36(c)” to “10 CFR 50.36(d)”. This re-designation of the 10 CFR 50.36 sections resulted in significant unintended administrative consequences to licensees of operating nuclear power plants. The current standard technical specifications bases for operating nuclear power plants (NUREGs 1430, 1431, 1432, 1433, and 1434) reference 10 CFR 50.36(c) numerous times. For example, NUREG-1431, Volume 2, Revision 3.0, “Standard Technical Specifications Westinghouse Plants / Bases” makes reference to 10CFR 50.36(c) over 100 times. There are many license documents affected such as Technical Specification Bases, implementing operations procedures, training programs, and Technical Specification Task Force Travelers (TSTFs). The NRC also has many other documents which are now inconsistent (e.g., NUREG-0800, NUREG-1793, Draft NUREG-1855, Regulatory Guide 1.105, Regulatory Guide 1.196, NRC Office Instruction LIC-101, NRC Management Directive 8.1, SECY’s).

The existing regulation 10 CFR 50.36(d) contains three errors in which parts of the new (d) still contain internal references to (c). The specific internal references are noted below and they reference paragraph (c) instead of paragraph (d).

10CFR 50.36(d)(2)(iii) “A licensee is not required to propose to modify technical specifications that are included in any license issued before August 18, 1995, to satisfy the criteria in paragraph (c)(2)(ii) of this section.”

10 CFR 50.36(d)(4) “Design features. Design features to be included are those features of the facility such as materials of construction and geometric arrangements, which, if altered or modified, would have a significant effect on safety and are not covered in categories described in paragraphs (c) (1), (2), and (3) of this section.”

10 CFR 50.36(d)(8) “Written Reports. Licensees for nuclear power reactors licensed under § 50.21(b) and § 50.22 of this part shall submit written reports to the Commission in accordance with § 50.73 of this part for events described in paragraphs (c)(1) and (c)(2) of this section. For all licensees, the Commission may require Special Reports as appropriate.”

Action Requested – Proposed Amended Regulation

The Petition requests that the new paragraph 10 CFR 50.36(c) inserted by Reference 1 be re-designated as paragraph 10 CFR 50.36(f) and the current paragraphs 10 CFR 50.36(d) through (f) be re-designated as 10CFR 50.36(c) through (e).

The STARS alliance proposes NRC Regulation 10 CFR 50.36 be amended as follows:

- (c) Technical specifications will include items in the following categories:
 - (1) Safety limits...
 - (2) Limiting conditions for operation ...
 - (3) Surveillance requirements ...
 - (4) Design features ...
 - (5) Administrative controls ...
 - (6) Decommissioning ...
 - (7) Initial notification ...
 - (8) Written reports ...

- (d) (1) This section shall not be deemed to modify the technical ...
- (2) An applicant for a license authorizing operation of a production ...
- (3) At the initiative of the Commission or the licensee ...
- (e) The provisions of this section apply to each nuclear reactor licensee...
- (f) Each applicant for a design certification or manufacturing license under part 52 of this chapter shall include in its application proposed generic technical specifications in accordance with the requirements of this section for the portion of the plant that is within the scope of the design certification or manufacturing license application.

If paragraph 10 CFR 50.36(d) is re-designated to (c) then the internal references in paragraph (c) will be correct.

A review of the previously issued final rule (Reference 1) has determined that no other changes to the regulations would be required as a result of moving 50.36(c) to 50.36(f) as requested by this Petition. There were generic references to Technical Specifications (i.e., 10 CFR 50.36, 10 CFR 50.36a) but no specific references to 50.36(c).

The Petition requests that the changes be issued by publishing a proposed rule and direct final rule concurrently on the same date. The final rule would be effective 75 days after the date the direct rule was issued in the Federal Register, unless significant adverse comments were received by [Date] (30 days from date the proposed rule is issued). A significant adverse comment would be a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the NRC receives any significant adverse comments, the NRC would publish a document that withdraws the direct final rule and addresses the comments received in a final rule as a response to the companion proposed rule published previously in the Federal Register.

There are several precedents to support this proposed action of issuing a proposed rule and direct final rule concurrently (References 2 through 5). Because this Petition is non-controversial and administrative in nature the direct final rule process should be used for this change to the regulation.

10 CFR 2.802 (c) (2) - State clearly and concisely the petitioner's grounds for and interest in the action requested;

Basis for Petition

The STARS alliance believes the addition of a new paragraph by Reference 1 resulted in the unintended administrative consequence that all current operating nuclear power plants have incorrect references to 10 CFR 50.36(c). Also, internal references in paragraph 10 CFR 50.36(d) reference the incorrect paragraph. This Petition re-numbers the paragraphs in 10 CFR50.36 to correct the inconsistency.

Petitioner's Interest in the Action Requested

The STARS alliance represents 11 operating nuclear power plants and is concerned with the resources required to revise the affected Technical Specifications and supporting documents. The use of resources for administrative corrections such as this diverts them from safety significant issues. This Petition also benefits other operating nuclear power plants and the NRC for the same reasons.

10 CFR 2.802 (c) (3) - Include a statement in support of the petition which shall set forth the specific issues involved, the petitioner's views or arguments with respect to those issues, relevant technical, scientific or other data involved which is reasonably available to the petitioner, and such other pertinent information as the petitioner deems necessary to support the action sought. In support of its petition, petitioner should note any specific cases of which petitioner is aware where the current rule is unduly burdensome, deficient, or needs to be strengthened."

Justification for the Petition

- A. The change is administrative in nature and has no technical impact.
- B. Granting this Petition will prevent potential errors by eliminating required updates to affected programs and documents which would otherwise be necessary to address the existing conflicts.
- C. This is a burdensome and ineffective use of industry and NRC resources. The significant industry effort to update site documents to correct references to 10 CFR 50.36(c) is burdensome with no safety benefit. Licensee training programs (e.g., lesson plans, training manuals) will require revision to be consistent with the current regulation. This will also impact NRC resources required to correct references to many of their documents.
- D. There are three incorrect internal references currently in 10 CFR 50.36(d). Therefore, a change to 10 CFR 50.36 is necessary and re-designating the paragraphs as requested by this Petition is more beneficial for the STARS alliance, the industry and the NRC than correcting the three internal references.

- E. Issuing the requested change as a direct final rule will minimize the time period in which Technical Specification Bases, implementing documents, training programs, and various other NRC documents will be inconsistent (i.e., incorrect reference to 10 CFR 50.36 (c)).
- F. The direct final rule process was created to correct situations such as this. Revising the regulations is more efficient than multiple licensing actions to correct inconsistencies with the current regulation.

References

1. Federal Register Notice Volume 72, page 49351, dated August 28, 2007, Final Rule, Licenses, Certifications, and Approvals for Nuclear Power Plants
2. Federal Register Notice Volume 72, page 44988, dated August 10, 2007, NRC Size Standards; Revision/RIN 3150-AI15 (Proposed Rule)
3. Federal Register Notice Volume 72, page 44951, dated August 10, 2007, NRC Size Standards; Revision/RIN 3150-AI15 (Direct Final Rule)
4. Federal Register Notice Volume 72, page 28455, dated May 21, 2007, Emergency Preparedness Policies Developed for Nuclear Materials Facilities/RIN 3150-AI17 (Proposed Rule)
5. Federal Register Notice Volume 72, page 28449, dated May 21, 2007, Emergency Preparedness Policies Developed for Nuclear Materials Facilities/RIN 3150-AI17 (Direct Final Rule)