

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
WASHINGTON, DC 20555-0001

September 26, 2012

NRC REGULATORY ISSUE SUMMARY 2012-11
NRC STAFF POSITION ON DISPOSITIONING BOILING-WATER REACTOR LICENSEE
NONCOMPLIANCE WITH TECHNICAL SPECIFICATION REQUIREMENTS DURING
OPERATIONS WITH A POTENTIAL FOR DRAINING THE REACTOR VESSEL

ADDRESSEES

All holders of an operating license for a boiling water nuclear power reactor under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities," except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel. All applicants for a boiling water nuclear power reactor operating license under 10 CFR Part 50, and all applicants for a boiling water nuclear power reactor combined license under 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power."

INTENT

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to inform licensees about the regulatory relief available for complying with technical specification (TS) requirements during the conduct of operations with a potential to drain the reactor vessel (OPDRVs) and to communicate the NRC's plan for considering improvements to the Standard Technical Specifications (STS) related to OPDRVs. TS requirements with an applicable mode or other specified condition described as "during operations with a potential for draining the reactor vessel" are affected. The plan consists of integrating improvements to the STS and a streamlined license amendment process with the use of enforcement discretion, where appropriate. This RIS does not transmit any new requirements and does not require any specific action or written response on the part of an addressee.

BACKGROUND INFORMATION

In 2010, the NRC cited a licensee for violating 10 CFR 50.59, "Changes, Tests and Experiments," with procedure changes that re-interpreted the term OPDRV allowing the licensee to conduct activities that it had previously considered to be OPDRV activities without having to comply with OPDRV TS requirements. Since that time, the NRC staff has learned that many other boiling-water reactor (BWR) licensees have similarly changed their plant procedures to interpret the plain language meaning of OPDRV in a way that restricts the applicability of OPDRV TS requirements or that uses compensatory measures to avoid having to comply with the TS requirements. However, TSs do not allow for the application of compensatory measures as a means of avoiding entry into TS limiting conditions for operation. Also, the NRC has not issued guidance or other generic communications indicating that a licensee can apply compensatory measures to avoid entry into TS limiting conditions for operation, with the exception of the regulatory relief described in this RIS.

ML11251A233

SUMMARY OF THE ISSUE

The cited violation discussed above prompted the NRC staff to address its safety concerns with the industry. On July 27, 2011, the NRC staff and the Boiling-Water Reactor Owners Group (BWROG) held a public meeting in Rockville, MD (Agencywide Documents Access and Management System (ADAMS) Accession No. ML112220018), to discuss industry implementation of OPDRV TS requirements considering that TSs do not define the plant condition “operation with a potential for draining the reactor vessel.” At the meeting, BWROG presented the industry position that any operation that licensees can mitigate before uncovering irradiated fuel should not be considered an activity that is an OPDRV. The NRC staff said that the plain language meaning of the words “operation with the potential for draining the reactor vessel” apply. The NRC staff considers OPDRV activities to be any activity that could result in the draining or siphoning of the reactor pressure vessel (RPV) water level below the top of the fuel, without crediting the use of mitigating measures to terminate the uncovering of the fuel.

TSs require certain safety systems to be operable during OPDRV activities to mitigate drain down events and to protect against untreated fission product release if the RPV water level drops and uncovers irradiated fuel. Therefore, licensees must maintain secondary containment (a structure that forms a control volume to hold up and dilute fission products that escape primary containment) operable in Modes 4 or 5 to ensure that a control volume will function during operations for which significant releases of radioactive material can be postulated, such as during OPDRV activities or during the movement of irradiated fuel assemblies in the secondary containment.

The results of recent meetings with BWROG and the NRC staff’s review of past licensing positions and its previous interactions with the industry on OPDRV activities have shown inconsistent implementation by licensees of the plain language meaning of the words “operations with a potential for draining the reactor vessel.” A contributing factor to the inconsistent implementation of the OPDRV requirements has been the lack of formal regulatory guidance for licensees to follow. In addition, the NRC staff notes that all OPDRVs currently have the same TS requirements regardless of the level of likelihood of draining the reactor vessel. As a result, although licensees in some cases could provide an equivalent level of safety by taking alternative actions in lieu of those required by TSs, they are prevented by TSs from doing so. This may cause an undue burden in the licensee’s outage management.

To improve regulatory clarity for BWR plants in the interim and to allow the implementation of specific interim actions as an alternative to full compliance with plant TSs while improvements to the STS and a streamlined license amendment process are under development, the NRC has decided to exercise limited enforcement discretion, expiring on December 31, 2013, as described in Enforcement Guidance Memorandum (EGM) 11-003, “Enforcement Guidance Memorandum on Dispositioning Boiling-Water Reactor Licensee Noncompliance with Technical Specification Containment Requirements during Operations with a Potential for Draining the Reactor Vessel,” dated October 4, 2011 (ADAMS Accession No. ML11251A230). Limited enforcement discretion will be integrated with the license amendment process to resolve TS compliance issues created by the lack of formal regulatory guidance on the meaning of OPDRV and to resolve inconsistent licensee interpretations of the plain language meaning of the term OPDRV.

BACKFIT DISCUSSION

This RIS conveys the information in EGM 11-003 to inform licensees about the applicability of TS requirements during the conduct of OPDRVs. Plant TSs do not allow licensees to use compensatory measures to avoid having to comply with TS Required Actions. EGM 11-003

provides licensees with an optional alternative to full compliance with the OPDRV requirements in the plant TSs because the staff recognized that the TS OPDRV requirements may be unduly burdensome in certain circumstances. The NRC staff considers the interim actions that must be implemented by a licensee during an OPDRV activity in order to receive enforcement discretion to be an acceptable alternative to full compliance with plant TSs because the interim actions provide an adequate level of protection while conducting the OPDRV activity. However, licensees do not have to take advantage of the discretion offered in EGM 11-003. They can, alternatively, continue to comply with their existing TS requirements. Therefore, no new requirements have been imposed on licensees, so this RIS is not a backfit under 10 CFR 50.109, "Backfitting." In addition, this RIS requires no action or written response. Consequently, the NRC staff did not perform a backfit analysis.

FEDERAL REGISTER NOTIFICATION

The NRC did not publish a notice of opportunity for public comment on this RIS in the *Federal Register* because it is informational and does not change the staff enforcement discretion offered by EGM 11-003. The NRC intends to work with the Nuclear Energy Institute, industry representatives, members of the public, and other stakeholders to develop final guidance and revise related guidance documents.

CONGRESSIONAL REVIEW ACT

This RIS is a rule as designated in the Congressional Review Act (5 U.S.C. 801-808). However, the NRC has determined this RIS is not a major rule as designated by the Congressional Review Act and has verified this determination with the Office of Management and Budget.

PAPERWORK REDUCTION ACT STATEMENT

This RIS contains and references information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These information collection requirements were approved by the Office of Management and Budget (OMB), approval numbers 3150-0011 and 3150-0151.

PUBLIC PROTECTION NOTIFICATION

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

CONTACT

Please direct any questions about this matter to the technical contact listed below.

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Note: NRC generic communications may be found on the NRC public Web site,
<http://www.nrc.gov>, under NRC Library/Document Collections.

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